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National Aeronautics and Space Administration

Revision of NASA Procurement Regulations

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 18—National Aeronautics and Space Administration Procurement Regulations

REVISION OF CHAPTER

Chapter 18 of Title 41 is revised in its entirety as set forth below.

Part
18–1 General provisions.
18–2 Procurement by formal advertising.
18–3 Procurement by negotiation.
18–4 Special types and methods of procurement.
18–5 Interdepartmental procurement.
18–6 Foreign purchases.
18–7 Contract clauses.
18–8 Termination of contracts.
18–9 Innovations, inventions, patents, data, and copyrights.
18–10 Bonds and insurance.
18–11 Federal, State, and local taxes.
18–12 Labor.
18–13 Government property.
18–14 Inspection and acceptance.
18–15 Contract cost principles and procedures.
18–16 Procurement forms.
18–17 Extraordinary contractual adjustments procedure.
18–50 Administrative policies and procedures.
18–51 Contract management procedures.
18–52 Priorities and allocations.
18–53 Reserved.
18–54 Contract appeal procedure.

PART 18–1—GENERAL PROVISIONS

Subpart 18–1.1—Introduction

Sec.
18–1.100 Scope of subpart.
18–1.101 Purpose of this chapter.
18–1.102 Applicability.
18–1.103 Arrangement of this chapter.
18–1.107 Dissemination and effective date of this chapter and revisions.
18–1.109 Deviations and other procurement publications.
18–1.109–1 Applicability.
18–1.109–2 Approval of deviations.
18–1.109–3 Requests for deviations.
18–1.110 Reports of contracts.
18–1.111 Reports of noncompetitive practices.
18–1.112 Relationship to ASPR and FPR.
18–1.113 Code of conduct.
18–1.114 Reporting of identical bids.
18–1.115 Noncollusive bids and proposals.

Subpart 18–1.2—Definition of Terms

18–1.201 Definitions.
18–1.202 Administrator.
18–1.203 Change order.
18–1.204 Construction contractor.
18–1.205 Contract modification.
18–1.206 Contracting officer.
18–1.207 Contracts.
18–1.208 Director of procurement.
18–1.209 Executive agency.
18–1.210 Federal agency.
18–1.211 Field installation.
18–1.212 Field procurement office.
18–1.213 Government instrumentality.
18–1.214 Head of a field installation.
18–1.215 Head of the agency.
18–1.216 Includes.
18–1.217 Installation.
18–1.218 Manufacturer.
18–1.219 May.
18–1.220 NASA.
18–1.221 Negotiate and negotiation.
18–1.222 Office of procurement.
18–1.223 Possessions.
18–1.224 Procurement.
18–1.225 Procurement office.
18–1.226 Procurement officer.
18–1.227 Procuring activity and head of a procuring activity.
18–1.228 Regular dealer.
18–1.229 Service contractor.
18–1.230 Shall.
18–1.231 Small Business concern.
18–1.232 Supplemental agreement.
18–1.233 Supplies and property.
18–1.234 United States.

Subpart 18–1.3—General Policies

Sec.
18–1.300 Scope of subpart.
18–1.301 Methods of procurement.
18–1.302 Sources of supply.
18–1.302–1 Government agencies.
18–1.302–2 Sources outside the Government.
18–1.302–3 Production and research and development pools.
18–1.302–50 Contracts between NASA and Government employees.
18–1.302–51 Proposed subcontracts between NASA contractors and Government employees.
18–1.304 Selection of items involving proprietary data or other restrictive factors.
18–1.305 Time of delivery or performance.
18–1.305–1 Scope.
18–1.305–2 General.
18–1.305–3 Terms.
18–1.305–4 Time of delivery clauses.
18–1.306 Approval signature.
18–1.307 Priorities, allocations, and allotments.
18–1.307–1 NASA program.
18–1.307–2 Required use of priorities, allocations, and allotments clause.
18–1.308 Records of contract actions.
18–1.309 Solicitations for information or planning purposes.
18–1.310 Liquidated damages.
18–1.311 Construction contracts—Disclosure of Government estimate.
18–1.312 Voluntary refunds.
18–1.314 Contracting officer's decision under the disputes clause.
18–1.315 Security requirements.
18–1.316 Disclosure of contractor performance data to other government agencies and foreign governments.
18–1.350 Nondiscrimination clause—Government leases.
18–1.350–1 Policy.
18–1.350–2 Use of clause.
18–1.350–3 Lease amendments and renewals.
18–1.350–4 Invitation for bids or request for proposals involving leases.
18–1.350–5 Deviations.

Subpart 18–1.5—Contingent or Other Fees

18–1.500 Scope of subpart.
18–1.502 Applicability.
18–1.503 Covenant against contingent fees clause.
18–1.504 Improper influence.
18–1.505 General principles and standards applicable to the covenant.
18–1.505–1 Contingent character of the fee.
18–1.505–2 Exceptions to the prohibition of the covenant.
18–1.505–3 Bona fide employee.

Sec.
18-1.505-4 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.
18-1.505-5 Fees for information.
18-1.506 Representation and agreement required from prospective contractors.
18-1.506-1 Interpretation of the representation.
18-1.507 Use of Standard Form 119.
18-1.507-1 Statement in lieu of form.
18-1.507-2 Exceptions.
18-1.507-50 Additional provision.
18-1.508 Enforcement.
18-1.508-1 Failure or refusal to furnish Standard Form 119.
18-1.508-2 Misrepresentations or violations of the covenant against contingent fees.
18-1.509 Preservation of records.
18-1.550 Responsibility for protecting information contained in completed Standard Form 119.

Subpart 18-1.6—Debarred, Ineligible, and Suspended Bidders

18-1.600 Scope of subpart and definitions.
18-1.600-1 Scope.
18-1.600-2 Definition of affiliates.
18-1.601 Establishment and maintenance of a list of firms or individuals debarred or ineligible.
18-1.601-1 General.
18-1.601-2 Information contained in NASA list.
18-1.601-3 Joint consolidated list.
18-1.601-4 Protection of lists.
18-1.601-50 Authority for making determinations.
18-1.601-51 Compliance with NASA list and joint consolidated list.
18-1.602 Limitation.
18-1.603 Grounds for listing and treatment to be accorded listed concerns.
18-1.604 Debarment of bidders.
18-1.604-1 Authority in NASA to debar firms and individuals.
18-1.604-2 Causes for debarment.
18-1.604-3 Period and scope of debarment.
18-1.604-4 Notice of debarment.
18-1.604-50 Reporting procedures.
18-1.605 Suspension of bidders.
18-1.605-1 General.
18-1.605-2 Authority in NASA to suspend firms or individuals.
18-1.605-3 Causes for suspension.
18-1.605-4 Period and scope of suspension.
18-1.605-5 Restrictions during period of suspension.
18-1.605-6 Notice of suspension.
18-1.605-50 Reporting procedures.
18-1.606 Limited debarment or suspension.
18-1.607 Interchange of debarment information.

Subpart 18-1.7—Small Business Concerns

18-1.700 Scope of subpart.
18-1.701 Definitions.
18-1.701-1 Small business concern.
18-1.701-4 Manufacturing industry employment size standards.
18-1.702 General policy.
18-1.703 Determination of status as small business concern.
18-1.704 Small business officials.
18-1.704-1 Headquarters.
18-1.704-2 Field installations.
18-1.705 Cooperation with the small business administration.
18-1.705-1 General.
18-1.705-2 Small business administration representatives.
18-1.705-3 Screening of procurements.
18-1.705-4 Access to procurement information.
18-1.705-5 Joint SBA-NASA small business class set-aside for construction, repair and alteration work.
18-1.705-6 Certificates of competency.
18-1.705-7 Performance of contract by small business administration.
18-1.706 Set-asides for small business.
18-1.706-1 General.
18-1.706-2 Review of small business administration set-aside proposals.
18-1.706-3 Withdrawal or modification of set-asides.
18-1.706-4 Reporting for department of commerce procurement synopsis.
18-1.706-5 Total set-asides.
18-1.706-6 Partial set-asides.
18-1.706-7 Automatic dissolution of set-asides.
18-1.706-8 Contract authority.
18-1.706-9 Maintenance of records.
18-1.707 Subcontracting with small business concerns.
18-1.707-1 General.
18-1.707-2 Small business subcontracting program.
18-1.707-3 Required clauses.
18-1.707-4 Responsibility for reviewing the subcontracting program.
18-1.707-5 Reports on NASA Form 524.
18-1.707-6 Subcontracting studies and surveys.
18-1.707-7 Small business administration review of agency records.

Subpart 18-1.8—Labor Surplus Area Concerns

18-1.850 Screening of procurements with respect to labor surplus area concerns.

Subpart 18-1.9—Responsible Prospective Contractors

18-1.900 Scope of subpart.
18-1.901 Applicability.
18-1.902 General policy.
18-1.903 Minimum standards for responsible prospective contractors.
18-1.903-1 General standards.
18-1.903-3 Ability to meet certain minimum standards.
18-1.903-4 Affiliated concerns.
18-1.904 Determinations of responsibility and nonresponsibility.
18-1.905 Procedures for determining responsibility of prospective contractors.
18-1.905-1 General.
18-1.905-2 When information will be obtained.
18-1.905-3 Sources of information.
18-1.905-4 Pre-award surveys.
18-1.905-50 Factors to be considered.
18-1.905-51 When surveys normally are not required.
18-1.905-52 Procedures for requesting pre-award surveys.
18-1.905-53 Procedures for accomplishing pre-award surveys.
18-1.906 Subcontractor responsibility.
18-1.907 Disclosure of pre-award data.
18-1.950 Format of Request for Pre-Award Survey (NASA Form 585)
18-1.951 Format of Financial Data Sheet (NASA Form 586)

Subpart 18-1.10—Publicizing Procurement Actions

18-1.1001 General policy.
18-1.1002 Availability of invitations for bids and requests for proposals.
18-1.1003 Synopses of proposed procurements.
18-1.1003-1 General.
18-1.1003-3 Synopses of subcontract opportunities.
18-1.1003-4 Responsibility of small business specialists.
18-1.1003-5 Publication of procurements of less than $10,000.
18-1.1003-6 Pre-invitation notices.
18-1.1003-7 Information regarding specifications, plans, and drawings.
18-1.1003-8 Time of publicizing.
18-1.1003-9 Preparation and transmittal.
18-1.1003-10 Area redevelopment administration.
18-1.1004 Synopses of contract awards.
18-1.1004-1 Preparation and transmittal.
18-1.1005 Classification codes.
18-1.1005-1 Codes for services.
18-1.1005-2 Codes for supplies.
18-1.1006 Paid advertisements in newspapers and trade journals.
18-1.1050 Furnishing additional procurement information to public.

Subpart 18-1.12—Specifications, Plans, and Drawings

18-1.1200 Application.

Subpart 18-1.14—Preference or United States-Flag Air and Ocean Carriers

18-1.1400 Scope of subpart.
18-1.1402 General.
18-1.1404 Procedures.
18-1.1405 Responsibilities.

Subpart 18-1.16—Novation Agreements

18-1.1600 Scope of subpart.
18-1.1601 Definition.
18-1.1602 Agreement to recognize a successor in interest.
18-1.1603 Agreement to recognize change of name of contractor.
18-1.1650 Procedures.
18-1.1651 Novation agreement formats and related NASA documents.
18-1.1651-1 Successor in interest agreement format.
18-1.1651-2 Change of name agreement format.
18-1.1651-3 Sample letter requesting issuance of change order.
18-1.1651-4 Sample change order format.

Subpart 18-1.50—Integration of Quality Requirements in NASA Procurements

18-1.5000 Scope of subpart.
18-1.5001 Policy.
18-1.5002 Classification of NASA procurements.
18-1.5003 Responsibilities.
18-1.5004 Procedures.
18-1.5005 Technical factors.

Subpart 18-1.51—Integration of Reliability Requirements into NASA Procurements

18-1.5100 Scope of subpart.
18-1.5101 Policy.
18-1.5102 Definitions.
18-1.5103 Application.
18-1.5104 Responsibilities.
18-1.5105 Procedures.
18-1.5106 Technical factors (requests for proposals and work statements).

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Subpart 18–1.1—Introduction

§ 18–1.100 Scope of subpart.

This subpart sets forth introductory information pertaining to the purpose, applicability, and content of this chapter.

§ 18–1.101 Purpose of this chapter.

This chapter, issued by the Director of Procurement under authority delegated by the Administrator, establishes for the National Aeronautics and Space Administration (NASA) uniform policies and procedures relating to the procurement of property and services under the authority of the National Aeronautics and Space Act of 1958, as amended (Public Law 85–568; 42 U.S.C. 2451 et seq.), Chapter 137, Title 10, of the United States Code, or other statutory authority.

§ 18–1.102 Applicability.

This chapter applies to all purchases and contracts made by NASA, within or outside the United States, for the procurement of property or services which obligate appropriated funds, unless otherwise specified herein.

§ 18–1.103 Arrangement of chapter.

This chapter is divided into parts, each one of which covers a separate aspect of procurement; and each part is further subdivided into subparts, sections, and paragraphs.

§ 18–1.107 Dissemination and effective date of this chapter and revisions.

(a) The NASA Procurement Regulation, and Revisions thereof, will be distributed directly to NASA installations by the U.S. Government Printing Office. The number of copies of the Regulation, and Revisions thereof, will be distributed on the basis of the requirements furnished by each Headquarters Staff Office, Headquarters Program Office, and NASA field installation, to the Office of Procurement, NASA Headquarters (Code KDP).

(b) Heads of field installations will ensure that copies of the NASA Procurement Regulation are distributed to all interested NASA activities and individuals within their installation.

(c) Copies of the NASA Procurement Regulation, and Revisions thereof, may be purchased by private concerns and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, D.C., 20402.

§ 18–1.109 Deviations and other procurement publications.

§ 18–1.109–1 Applicability.

A deviation shall be considered to be any of the following:

(a) When a prescribed contract clause is set forth verbatim in NASA procurement regulations, use of a contract clause or a schedule provision covering the same subject matter which varies from, or has the effect of altering, the prescribed NASA clause, or changing its application;

(b) When a Standard, NASA, or other form is prescribed by NASA procurement regulations, use of any other form for the same purpose;

(c) Alteration of a Standard or NASA form except as authorized by NASA procurement regulations;

(d) When limitations are imposed by NASA procurement regulations upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, the imposition of lesser or greater limitations; or

(e) When a policy, procedure, method or practice of conducting procurement actions is prescribed in NASA procurement regulations, any policy, procedure, method or practice inconsistent therewith.

§ 18–1.109–2 Approval of deviations.

Deviations from NASA procurement regulations will be authorized only when it is essential to effect necessary procurement or where special circumstances make such deviations clearly in the best interest of the Government. Such deviations will be approved only by the Director of Procurement, or his authorized representative.

§ 18–1.109–3 Requests for deviations.

Requests for authority to deviate from the provisions of this chapter and other procurement publications shall be submitted to the Office of Procurement (Code KDR). Such requests shall be signed by the Procurement Officer of a field installation (or the Director in the case of the Headquarters Contracts Division and the Grants and Research Contracts Division) or his deputy. Such requests shall be submitted as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain the following:

(a) A clear statement of the deviation desired;

(b) The reasons the deviation is considered necessary or would be in the best interest of the Government;

(c) The name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request; and

(e) Any pertinent background information which will contribute to a full understanding of the desired deviation.

§ 18–1.110 Reports of contracts.

(a) Special reports concerning NASA contracts prescribed by NASA Headquarters are designed to meet statutory and other Congressional requirements, requirements of other Government agencies, and to provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of compliance with prescribed policy.

(b) Basic recurring reports are set forth in Subpart 18–16.9, and include the Individual Procurement Action Report (NASA Form 507) and the Procurement Status Report (NASA Form 561). The statistics furnished in these reports are also used in the preparation of reports furnished to the President, the Congress, other Government agencies, and management within NASA. The accuracy, completeness, and timeliness of all reports are fully dependent on careful preparation and prompt submission.

§ 18–1.111 Reports of noncompetitive practices.

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Administrator, NASA, or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General of the United States for appropriate action (see § 18–2.404–1(b)(6) of this chapter). Similarly, evidence of such violations in negotiated procurements will be referred to the Attorney General (see § 18–3.215–2 of this chapter). Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, or similar actions.

(b) When bids or proposals are received and, in the opinion of the contracting officer, are indicative of possible antitrust violations, he shall report such circumstances to the General Counsel, NASA, Headquarters, through the Office of Procurement (Code KDP). Reports of such bids or proposals should not be submitted automatically, but only when there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth:

(1) The noncompetitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstracts of bids;

(3) Community of financial interest among bidders, insofar as it is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

(6) Any other information considered pertinent.

(c) Evidence of noncompetitive bid practices which, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States.

(d) The reports required by this § 18–1.111 are separate and apart from the reporting requirement contained in § 18–1.114.

§ 18–1.112 Relationship to ASPR and FPR.

(a) Since NASA is governed by the same procurement law as the Department of Defense (Chapter 137, Title 10

U.S.C.), and both agencies deal to a considerable extent with the same segment of industry, it is NASA policy to prescribe procurement regulations which, to the maximum practicable extent, are consistent with policies and procedures adopted by the Department of Defense in the Armed Services Procurement Regulation (ASPR).

(b) NASA and the General Services Administration have also reached agreement concerning the relationship between the Federal Procurement Regulation (FPR) and the NASA Procurement Regulation. NASA has agreed to participate in the publication program established by the FPR system. Therefore, portions of the NASA Procurement Regulation which require publication will be published in this chapter and will utilize the numbering system of the FPR system.

§ 18–1.113 Code of conduct.

(a) A number of Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to procurement activities for the Government. Among these statutes are the following: (1) 18 U.S.C. 201 relating to bribes in order to secure a Government contract; (2) 18 U.S.C. 203 relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest; (3) 18 U.S.C. 205 relating to acting as an agent or attorney for prosecuting any claim against the United States; (4) 18 U.S.C. 208 relating to transacting business as an officer or agent of the United States with firms of which such officer or agent, his spouse, minor child, or partner is an official or in which he has a pecuniary interest; and (5) 18 U.S.C. 209 relating to compensation from non-Government sources in connection with Government services. All procurement personnel shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

(b) Aside from such statutory prohibitions, as set forth in paragraph (a), of this section, procurement personnel shall maintain the highest standards of conduct in connection with dealings on behalf of the Government. Such conduct must at all times be beyond reproach and must be such that each individual involved in NASA procurement activities would have no reticence in making a full public disclosure of all actions taken in connection with such activities.

§ 18–1.114 Reporting of identical bids.

(a) *General.* Executive Order 10936 (April 24, 1961, 3 C.F.R. 1961 Supp., p. 104), as implemented by the Department of Justice, requires that a report be submitted to the Attorney General on each formally advertised procurement (including small business restricted advertising) over $10,000 which involves identical bids.

(b) *Definitions.* (1) Identical bids are two or more bids for the same line item which:

(i) Are identical on their face (regardless of such evaluation factors as discount, transportation, etc.) either as to unit price or total line item amount; or

(ii) Are identical as evaluated as to either unit price or total line item amount.

(2) The term "line item" means each object of procurement specified in an invitation for bids which, under the terms of the invitation, is susceptible to a separate contract award. The reporting requirements herein established for line items are applicable to invitations calling for line item bidding, even though such bids contain qualifying or restrictive limitations on award (e.g., all-or-none bids; lump sum awards in the case of construction contracts; award on one item conditioned on award of other items).

(c) *Information to be obtained from bidders.* Each invitation for bids for a procurement estimated to exceed $10,000 will include substantially the following:

PARENT COMPANY AND EMPLOYER IDENTIFICATION NUMBER (MARCH 1963)

(a) Bidder represents that he [ ] is, [ ] is not, owned or controlled by a parent company. For this purpose a parent company is defined as one which either owns or controls the activities and basic business policies of the bidder. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the bidder, such other company is considered the parent of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

(b) If the bidder is owned or controlled by a parent company, insert in the space below the name and main office of the parent company.

(Name) (Address)

(c) Bidder will provide in the applicable space below, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Identification Number as used on Federal Tax Return); or, if he has a parent company, the E.I. No. of his parent company.

Bidder's E.I. No.----------
Parent Company's E.I. No.----------

The information required by this paragraph (c) will be included on reports of identical bids. If identical bids are involved and bidders fail to provide this information, one inquiry will be made to obtain such information. Failure on the part of bidders to provide the information in this paragraph on invitation for bids shall be indicated on all reports of identical bids, but shall not be considered a basis for rejection of bids.

(d) *Reportable bids.* All identical bids shall be reported when the bid value of all line items covered by the invitation for bids exceeds $10,000 (based on the apparent low bid for each line item), regardless of whether:

(1) They were the low bids;

(2) Award is made on the line item;

(3) The invitation was canceled; or

(4) Any other disposition was made subsequent to public opening of the bids.

(e) *Conditions under which identical bids are not reportable.* Reports shall not be submitted when:

(1) Bids are received only from foreign sources on invitations for bids involving delivery and performance outside the United States, its possessions, or Puerto Rico;

(2) There is no line item on which the apparent low bids exceed $2,500 (line item evaluation computations beyond those normally made to determine low bidders are not required); or

(3) No identical bids are discovered in the normal process of evaluating bids for award and no identical bids are apparent on the face of the bid.

(f) *Information to be reported.* When a procurement invitation results in the submission of identical bids to be reported under paragraph (d) of this section, a report shall be submitted showing the entire bid proceeding for each line item in which identical bids are received. A copy of the invitation for bids and a copy of the completed abstract of all bids received shall be filed with the report, except that an abstract will not be furnished if the number of line items on the invitation for bids exceeds 100. In such case, the report shall be annotated to indicate both the number of line items and the total number of bidders on the invitation.

(g) *Submission of reports.* (1) Identical Bid reports shall be submitted on Department of Justice Form DJ–1500 (Federal Stock No. 7540–823–7870), available from General Services Administration stores and depots. Instructions for completing this form are printed as the cover sheet of each pad of the forms. Reports shall be made within 20 days following the final disposition of all bids received in response to the invitation for bids involved. Two completed copies of the report, with attachments, and of the completed bid, shall be sent directly to the Attorney General (Code AT–IBR), Washington, D.C. One copy of the completed report (including abstract of bids, if appropriate) shall be retained by the reporting installation and one completed copy submitted to the Director of Procurement (Code KDP), NASA Headquarters.

(2) This reporting requirement is in addition to and will not be deemed a substitute for the reports of noncompetitive practices required by § 18–1.111.

§ 18–1.115 Noncollusive bids and proposals.

(a) In order to promote full and free competition for Government contracts, the following certification shall be included in all (1) invitations for bids and (2) requests for proposals or quotations (other than for small purchases made in accordance with Subpart 18–3.6 of this chapter and other than requests for technical proposals in connection with two-step formal advertising) involving

firm fixed-price contracts and fixed-price contracts with escalation:

CERTIFICATION OF NONCOLLUSION (OCTOBER 1963)

(a) By submission of this bid or proposal, the bidder or offeror certifies in connection with this procurement that:

(1) The price in this bid or proposal has been independently arrived at without collusion with any other bidder or offeror or with any competitor;

(2) Unless otherwise required by law, the price in this bid or proposal has not been knowingly disclosed and will not be knowingly disclosed prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) No attempt has been or will be made to induce any other person or firm to submit or not to submit a bid or proposal.

(b) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a)(1), (a)(3) or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that the disclosure was not made with collusive intent.

(b) The authority to make the determination described in paragraph (d) of the certification in paragraph (a) of this section shall be exercised by the Director of the Installation or his deputy.

(c) Where a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with § 18–1.111. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see §§ 18–2.404–1(b)(6) and 18–3.215–2 of this chapter.

Subpart 18–1.2—Definition of Terms

§ 18–1.201 Definitions.

As used throughout this chapter, the words and terms defined in this subpart shall have the meanings set forth in this subpart, unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion thereof.

§ 18–1.202 Administrator.

"Administrator" means the Administrator or Deputy Administrator of NASA.

§ 18–1.203 Change order.

"Change order" means a written order signed by the contracting officer, directing the contractor to make changes which the changes clause of the contract authorizes the contracting officer to order without the consent of the contractor.

§ 18–1.204 Construction contractor.

"Construction contractor" means a person (or firm) who, before being awarded a contract, satisfies the contracting officer that he qualifies as one:

(a) Who owns, operates, or maintains a place of business regularly engaged in the construction, alteration, or repair of buildings, structures, communication facilities, or other engineering projects, including the furnishing and installing of necessary equipment; or

(b) Who, if newly entering into a construction activity, has made all necessary prior arrangements for personnel, construction equipment, and required licenses to perform construction work.

§ 18–1.205 Contract modification.

"Contract modification" means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (a) bilateral actions such as supplemental agreements, and (b) unilateral actions such as change orders, administrative changes, notces of termination, and notices of the exercise of a contract option.

§ 18–1.206 Contracting officer.

"Contracting officer" means any employee of NASA who is currently designated a contracting officer with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or with any part of such authority. The term also includes the authorized representative of the contracting officer acting within the limits of his authority.

§ 18–1.207 Contracts.

"Contracts" means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

§ 18–1.208 Director of procurement.

"Director of Procurement" means the Director, Office of Procurement, NASA Headquarters (Code KD).

§ 18–1.209 Executive agency.

"Executive agency" means any executive department or any independent establishment in the Executive Branch of the Government, including any wholly owned Government corporation, the National Aeronautics and Space Administration, and the Departments of the Army, Navy and Air Force.

§ 18–1.210 Federal agency.

"Federal agency" means any executive agency or any establishment in the Legislative or Judicial Branches of the Government (except the Senate, the House of Representatives, and the architect of the Capitol and any activities under his direction).

§ 18–1.211 Field installation.

"Field installation" means Ames Research Center; Electronics Research Center; Flight Research Center; Goddard Space Flight Center; Langley Research Center; John F. Kennedy Space Center, NASA; Lewis Research Center; Manned Spacecraft Center; George C. Marshall Space Flight Center; Pacific Launch Operation Center; North Eastern Office; Wallops Station; Western Operations Office, and any other field installation hereafter established by NASA.

§ 18–1.212 Field procurement office.

"Field procurement office" means any NASA procurement office other than procurement offices at NASA Headquarters.

§ 18–1.213 Government instrumentality.

"Government instrumentality" means any of the following:

(a) An instrumentality of the U.S. Government;

(b) An agency or instrumentality of a State or local government, possession, or Puerto Rico;

(c) An agency or instrumentality of a foreign government.

§ 18–1.214 Head of a field installation.

"Head of a field installation" means the Director of a field installation.

§ 18–1.215 Head of the agency.

"Head of the agency" means the Administrator or Deputy Administrator of NASA.

§ 18–1.216 Includes.

"Includes" means "includes but is not limited to."

§ 18–1.217 Installation.

"Installation" means NASA Headquarters and field installations.

§ 18–1.218 Manufacturer.

"Manufacturer" means a person (or firm):

(a) Who owns, operates, or maintains a factory or establishment that produces on the premises the materials, articles, or equipment required under the contract and of the general character described by the specifications; or

(b) Who, if newly entering into a manufacturing activity, has made all necessary prior arrangements for manufacturing space, equipment, and personnel to perform the manufacturing operations required for contract performance; and

(c) Who, before being awarded a contract, satisfies the contracting officer that he qualified under paragraphs (a) or (b) of this section.

§ 18–1.219 May.

"May" is permissive. However, the words "no person may * * *" mean that no person is required, authorized, or permitted to do the act prescribed.

§ 18–1.220 NASA.

"NASA" means the National Aeronautics and Space Administration.

§ 18–1.221 Negotiate and negotiation.

"Negotiate and negotiation," when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

§ 18–1.222 Office of Procurement.

"Office of Procurement" means the Office of Procurement, NASA Headquarters.

§ 18–1.223 Possessions.

"Possessions" in a geographic sense includes the Virgin Islands, the Canal Zone, Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands but does not include Puerto Rico, leased bases, occupied Japanese islands, or trust territories.

§ 18–1.224 Procurement.

"Procurement" includes purchasing, renting, leasing, or otherwise obtaining supplies or services.

§ 18–1.225 Procurement office.

"Procurement office" means the offices at NASA Headquarters and NASA field installations charged with the responsibility for making and administering purchases and contracts.

§ 18–1.226 Procurement officer.

"Procurement officer" means the Head of a procurement office.

§ 18–1.227 Procuring activity and head of a procuring activity.

The terms "procuring activity" and "Head of a procuring activity" as used in portions of ASPR or the FPR incorporated by reference in this chapter correspond to the terms "field installation" and "head of a field installation" as used in this chapter. The Director of Procurement, NASA Headquarters, also falls within the term "head of a procuring activity" insofar as procurements by NASA Headquarters are concerned.

§ 18–1.228 Regular dealer.

"Regular dealer" means a person (or firm):

(a) Who owns, operates, or maintains a store, warehouse, or other establishment in which materials, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business; or

(b) In the case of articles of particular kinds (lumber and timber products, coal, machine tools, raw cotton, petroleum, green coffee, tea, agricultural liming materials, or hay, grain, feed, or straw), who satisfies the requirements of the Regulations of the Secretary of Labor (41 CFR 201.101(b) and 201.603(f) under the Walsh-Healey Public Contracts Act; and

(c) Who, before being awarded a contract, satisfies the contracting officer that he is engaged in an established regular business, meeting all the criteria of paragraph (a) or (b) of this section.

It is not enough in the case of a regular dealer to show only that arrangements have been made to set up such a business. Before an award can be made, the dealer must show that he is an established going business regularly dealing in the particular articles, or articles of the general character sought by the Government.

§ 18–1.229 Service contractor.

"Service contractor" means a person (or firm) who, before being awarded a contract, satisfies the contracting officer that he qualifies as one:

(a) Who owns, operates, or maintains a place of business regularly engaged in performing nonpersonal services, such as the repair, maintenance, or rebuilding of personal property; the packing, crating, or moving of material; the operation of equipment or facilities; the rental of equipment or facilities; or the performance of administrative, professional, or technical functions; or

(b) Who, if newly entering into a service activity, has made all necessary prior arrangements for personnel, service equipment, and required licenses to perform services.

§ 18–1.230 Shall.

"Shall" is imperative.

§ 18–1.231 Small business concern.

See § 18–1.701–1.

§ 18–1.232 Supplemental agreement.

"Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

§ 18–1.233 Supplies and property.

(a) "Supplies" or "property" means all property except land or interests in land. It includes public works, buildings, and facilities; aircraft, missiles, satellites, and other aeronautical and space vehicles, together with related equipment, devises, components, and parts; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this chapter is synonymous with "property" as described in 10 U.S.C. 2303(b).

(b) The terms "supplies" and "property" are used interchangeably in this chapter unless otherwise specifically provided. These terms as used in this chapter have the same meaning as the term "supplies" used in ASPR. The terms "personal property and nonpersonal services" as used in the FPR have the same meaning as "supplies and services" or "property and services" used herein.

§ 18–1.234 United States.

"United States," when used in a geographic sense, means the 50 States and the District of Columbia.

Subpart 18–1.3—General Policies

§ 18–1.300 Scope of subpart.

This subpart sets forth general policies with respect to the procurement of supplies and services by formal advertising and by negotiation.

§ 18–1.301 Methods of procurement.

(a) *General objective.* It is the objective of NASA to use that method of procurement which will be most advantageous to the Government, price, quality, and other factors considered.

(b) *Competition.* All procurements, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

(c) *Formal advertising.* Procurements shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be effected in accordance with Part 18–2 of this chapter.

(d) *Negotiation.* If the use of formal advertising is not feasible and practicable, procurements may be negotiated in accordance with Part 18–3 of this chapter.

§ 18–1.302 Sources of supply.

§ 18–1.302–1 Government agencies.

Before taking procurement action, in accordance with this chapter, installations shall ensure that they comply with applicable laws and regulations relative to obtaining supplies or services from Government sources and from contracts of other Government agencies. To the extent practicable, supplies shall be obtained from surplus property in the hands of disposal agencies and surplus or excess stocks in the hands of any government agency.

§ 18–1.302–2 Sources outside the Government.

Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the types of supplies and services necessary to meet NASA's requirements.

§ 18–1.302–3 Production and research and development pools.

(a) *Description.* A production or research and development pool is a group of concerns (1) who have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services or for research and development for defense use, or to effectuate the purposes of the Small Business Act; (2) who have entered into a pool agreement governing their organization, relationship, and procedure; and (3) whose agreement has been approved either in accordance with Section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), 50 U.S.C. App. 2158, or in accordance with Section

9(d) or 11 of the Small Business Act, 15 U.S.C. 631–647 (Small Business Pools). Pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act (see 18–12.6), of this chapter.

(b) *General rule.* Except as provided in this section, a pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a pool. In ascertaining the status of a group representing itself as a pool, contracting officers may rely on a copy of the Small Business Administration (SBA) or Office of Emergency Plans (OEP) (formerly OCDM) notification of approval of the pool. The Director of Procurement will expeditiously disseminate to field installations information received from SBA or OEP concerning the approval of production and research and development pools. In any case where the award of a contract to a group representing itself as a production or research and development pool is contemplated, and the contracting officer does not have data available as to the status of the pool, the group shall be requested to furnish to the contracting officer the following:

(1) A copy of the SBA or OEP notification of approval of the pool; and

(2) A list of the member companies of the pool and a statement regarding the type of organization and plan of operation of the pool.

(d) *Contracting with pools.* (1) A bid or proposal of a pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except for contracts to be awarded to incorporated pools, the contracting officer shall, prior to award to a pool, require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in his own name and not on behalf of a pool, the pool agreement shall be a factor to be considered in determining the pool member's responsibility, pursuant to Subpart 18–1.9.

§ 18–1.302–50 Contracts between NASA and Government employees.

(a) Procurement contracts between the Government and its employees or business organizations substantially owned or controlled by Government employees will not knowingly be entered into, except in those cases in which the needs of the Government cannot reasonably be otherwise supplied. The specific approval of the Director of Procurement must be obtained for any such contract.

(b) Surplus personal property shall not be sold to persons known to be officers or employees of the Federal Government, except as specifically authorized by the Director of Procurement.

§ 18–1.302–51 Proposed subcontracts between NASA contractors and government employees.

In the approval of subcontracts under NASA prime contracts, NASA contracting officers shall consider the policy restrictions of § 18–1.302–50 to apply to subcontracts.

§ 18–1.304 Selection of items involving proprietary data or other restrictive factors.

In some cases the procurement of an item would involve proprietary data (see § 18–9.201(b)) or other factors which would restrict sources of procurement or limit competition, but alternative items may be procured which would meet the needs of NASA. In such cases, consideration will be given, in selecting the item to be procured, to the relative advantages for aeronautical and space purposes of the item which involves such proprietary data or other factors as against the disadvantages of a restricted source of supply and possibly increased cost to the Government because of lack of competition. However, when a particular item best meets the needs of NASA, the contracting officer will not refrain from procuring the item solely because it would involve such restrictions or limitations.

§ 18–1.305 Time of delivery or performance.

§ 18–1.305–1 Scope.

This § 18–1.305 prescribes policy and procedure regarding requirements as to time of delivery or performance of contracts for supplies or services, excluding construction.

§ 18–1.305–2 General.

(a) The time of delivery or of performance is an essential element of a contract and must be clearly set forth in invitations for bids and requests for proposals. Time schedules for delivery or performance shall be designed to meet the requirements of the particular procurement, all relevant factors considered, and must be realistic. Schedules which are unreasonably tight or difficult of attainment tend to restrict competition, are inconsistent with small business policies, and may result in higher contract prices. Therefore, before issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery or performance schedule which appears unrealistic, and, if necessary, initiate action to mak appropriate adjustments, with due attention to all relevant factors including one or more of the following:

(1) Urgency of need for the supplies or services;

(2) Production time in view of quantity, complexity of design, etc.;

(3) Market conditions;

(4) Transportation time;

(5) Industry practices;

(6) Capabilities of small business concerns;

(7) Time for obtaining and evaluating bids or offers, and for awarding contracts;

(8) Time for contractors to comply with any conditions precedent to performance; and

(9) Time for the Government to perform its obligations under the contract (e.g., furnishing of Government property to the contractor, approval of preproduction samples, and inspection.)

(b) Where timely delivery or performance is unusually important to the Government, a liquidated damages provision may be used as provided for in § 18–1.310.

(c) Except where clearly unnecessary, invitations for bids and requests for proposals shall inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time delivery or performance.

§ 18–1.305–3 Terms.

(a) Delivery schedules may be expressed in terms of:

(1) Specific calendar dates (e.g., on or before July 1, 1964);

(2) Specified periods from date of contract (i.e., date of award or acceptance by the Government, or date shown on contract document as effective date of contract); or

(3) Specified periods from date of receipt by contractor of notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government).

The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. Accordingly, one of the provisions in paragraph (b) or (c) of this section shall be used in advertised procurements and may be suitably modified and used in appropriate negotiated procurements (other than small purchases).

(b) Where the delivery schedule is in terms of specific calendar dates, invitations for bids shall include one of the following provisions:

(1) The foregoing delivery requirements are based on the assumption that the Government will make award by (contracting officer, insert calendar date). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 8(d) of the Terms and Conditions of the Invitation for Bids, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing

the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails. (February 1962)

(ii) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (contracting officer, insert calendar date). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the contractor receives notice of award: *Provided*, That the contractor promptly acknowledges such receipt. (February 1962)

(c) Where the delivery schedule is based on the date of contract (see paragraph (a)(2) of this section), the invitations for bids will include the following provision:

Attention is directed to paragraph 8(d) of the Terms and Conditions of the Invitation for Bids, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected. (February 1962)

(d) Where the delivery schedule is besed on the date of the contract (see paragraphs (a)(2) and (c) of this section), the contract, notice of award, acceptance of proposal, or other contract document executed by the Government shall be mailed or otherwise furnished the contractor on the day it is dated.

(e) Where the delivery schedule is based on date of recipt by the contractor of notice of award (see paragraph (a)(3) of this section), or where it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see paragraph (b), clause ii of this section), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or shall be accompanied by a date of receipt acknowledgment card.

(f) When the required delivery schedule in the invitations for bids is based on date of the contract (see paragraph (a)(2) of this section), a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (see paragraph (a)(3) of this section):

(1) Shall be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails; and

(2) If the delivery date offered by the bid (computed in accordance with subparagraph (1) of this paragraph) is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but

(3) If award is made under subparagraph (1) of this paragraph, under the terms of the contract the delivery date will be the number of days, after actual receipt by the contractor of the notice of award, which were specified in the bid.

§ 18–1.305–4 Time of delivery clauses.

(a) Examples of time of delivery clauses for invitations for bids are set forth in paragraphs (b) and (c) of this section. They may be modified or other clauses may be used to state particular delivery requirements or any special procedures to be used in the evaluation, rejection, or award process as regards time of delivery. These clauses also may be suitably modified and used as appropriate in negotiated procurements.

(b) The following clause may be used where delivery by a particular time is essential to meet the Government's requirements:

TIME OF DELIVERY (FEBRUARY 1962)

Delivery is REQUIRED to be made in accordance with the following schedule:

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))

Bids offering delivery of each quantity within the applicable delivery period specified above will be evaluated equally as regards time of delivery. Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected. Where a bidder offers an earlier delivery schedule than that called for above, the Government reserves the right to award either in accordance with the required schedule or in accordance with the schedule offered by the bidder. If the bidder offers no other delivery schedule, the delivery schedule stated above shall apply.

BIDDER'S PROPOSED DELIVERY SCHEDULE

(TO BE COMPLETED BY BIDDER)

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))

(c) The following clause may be used where delivery by a certain time is DESIRED although not essential, but delivery by a specified later time is necessary to meet the Government's requirements.

TIME OF DELIVERY (FEBRUARY 1962)

Delivery is DESIRED by the Government in accordance with the following schedule:

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))

If the bidder is unable to meet the above delivery schedule, he may, without prejudice to the evaluation of his bid, set forth his Proposed Delivery Schedule below; but such delivery schedule must not extend the delivery period beyond the time of delivery called for in the following REQUIRED delivery schedule:

REQUIRED DELIVERY SCHEDULE

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))

Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable REQUIRED delivery period specified above will be considered nonresponsive and will be rejected.

If the bidder does not propose a different delivery schedule, the Government's DESIRED delivery schedule shall apply:

BIDDER'S PROPOSED DELIVERY SCHEDULE

(TO BE COMPLETED BY BIDDER)

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))

(d) In the blank spaces entitled "Time" under the clauses set forth in pars. (b) and (c) of this section, the contracting officer shall insert one of the following phrases, as appropriate:

(1) "[On] (on or before) the date(s) specified below."

(2) "Within the number of days stated below after date of contract."

(3) "Within the number of days stated below after the date of receipt of a written notice of award."

(4) "Within the periods specified below." (When this phrase is inserted, the wording "during the month(s) of _____," or "not sooner than _____ and not later than _____" should be used to specify the periods.)

§ 18–1.306 Approval signature.

Approval signatures on contracts or purchase authorizations shall be minimized to the greatest practical extent and, in the event that multiple approval signatures are required, they shall, where possible, be obtained concurrently.

§ 18–1.307 Priorities, allocations and allotments.

§ 18–1.307–1 NASA program.

(a) *General.* In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, it is national policy to require contractors to use ratings and allotment authority to support military procurement, to the extent required by the Business and Defense Services Administration (BDSA). In addition to direct procurement and construction of

the Department of Defense, the Office of Emergency Plans (formerly OCDM) has authorized BDSA to provide priorities authority for all procurement and construction programs of NASA. The Department of Defense is the claimant agency to the Office of Emergency Plans for NASA.

(b) *Implementation.* Department of Defense implementation of all rules and regulations published by BDSA, with respect to which the Department of Defense is delegated administrative responsibility, is contained in the DOD Priorities and Allocations Manual. NASA implementation is published in Part 18–52 of this chapter.

(c) *Operating responsibility.* NASA installations shall comply with the priorities and allocations program, including the Defense Materials System, as set forth in:

(1) The DOD Priorities and Allocations Manual;

(2) The rules and regulations published by BDSA; and

(3) Instructions set forth in Part 18–52 of this chapter.

§ 18–1.307–2 Required use of priorities, allocations, and allotments clause.

The following clause shall be inserted in or attached to all ratable contracts, except that no such clause need be attached to those purchase orders of less than $500 which are not rated. Ratable contracts are those contracts for supplies which are required to be supported with rating and allotment authority (see the DOD Priorities and Allocations Manual).

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (SEPTEMBER 1962)

The contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

§ 18–1.308 Records of contract actions.

(a) Each contract file shall contain documentation of actions taken with respect to the contract, including final disposition, sufficient to constitute a full history of the transaction which will permit ready reconstruction of all of the stages of the transaction to:

(1) Support actions taken by various personnel in the procurement cycle;

(2) Provide information for reviews conducted by the field installation concerned, the General Accounting Office, or others;

(3) Supply data for use in preparing replies to Congressional inquiries; and

(4) Furnish essential facts in the event of litigation.

To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or summary statements of undocumented actions should be prepared promptly and be retained in the contract file in chronological order.

(b) Each contract file shall include the following data, in the appropriate order and to the extent applicable:

(1) A copy of the procurement request;

(2) A copy of the Determination and Findings statement and justifications for authority to negotiate (see Subpart 18–3.3 of this chapter);

(3) A copy of the procurement plan (see § 18–3.852 of this chapter);

(4) The list of sources solicited or justification for limiting such sources;

(5) Any small business or labor surplus set-aside determinations;

(6) A copy of the invitation for bids or the request for proposals, including the drawings and specifications or an identifiable reference thereto;

(7) The Security Requirements Check List (DD Form 254);

(8) All bids or proposals received with an abstract thereof;

(9) The bidders' Statements of Contingent Fees;

(10) All pre-award surveys;

(11) Selection of the successful contractor, including—

(i) The reasons for selection;

(ii) Statement of the Source Evaluation Board (see § 18–3.856–2 of this chapter);

(iii) The contracting officer's determination of the contractor's responsibility; and

(iv) Any Small Business Administration Certificate of Competency (see § 18–1.705–6);

(12) All price and cost data submitted or used;

(13) A full record of negotiations, including but not limited to—

(i) Participants;

(ii) Dates of meetings or phone calls;

(iii) Government-furnished materials or facilities provided;

(iv) Subcontracting;

(v) Terms and conditions agreed to;

(vi) Deviations, if any, from prescribed contract clauses;

(vii) Technical recommendations; and

(viii) Justification for final price;

(14) Justification for type of contract used (see § 18–3.304 of this chapter);

(15) Any exceptions or exemptions from the Buy American Act or Appropriation Act restrictions (see Part 18–6 of this chapter);

(16) A copy of the contract or award;

(17) Required approvals of contract;

(18) All pertinent correspondence;

(19) Copies of all change orders, and supplements, with supporting documents;

(20) Comprehensive termination data;

(21) Copies of royalty reports received;

(22) Final release upon completion of the contract; and

(23) Evidence of legal review where required, and copy of comments, if any, made by legal counsel;

(24) Any additional documents considered necessary to present a complete résumé of the contract action.

(c) This does not apply in the case of small purchases (see § 18–3.603–2(c) of this chapter).

§ 18–1.309 Solicitations for information or planning purposes.

It is the general policy of NASA to solicit bids, proposals, or quotations only when there is a definite intention to award a contract. However, in some cases solicitation for information or planning purposes may be justified. Requests for quotations (Standard Form 18) will be used for this purpose. In such cases, the request for quotations shall clearly state its purposes, explaining that the Gevornment does not intend to award a contract on the basis of the request or otherwise pay for the information solicited. The foregoing does not prohibit the allowance, in accordance with § 18–15.205–3 of this chapter, of the cost of preparing such quotations.

§ 18–1.310 Liquidated damages.

(a) This applies to procurement by formal advertising and procurement by negotiation. Liquidated damages provisions normally will not be utilized but may be used where both (1) the time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damages if the delivery or performance is delinquent, and (2) the extent or amount of such damages would be difficult or impossible to ascertain or prove. Where a liquidated damages provision is to be used in a supply or service contract, insert the clause set forth in § 18–7.105–5 of this chapter.

(b) The rate of assessment of liquidated damages must be reasonable, considered in the light of procurement requirements on a case-by-case basis, since liquidated damages fixed without reference to probable actual damages may be held to be a penalty and therefore unenforceable.

(c) The law imposes the duty upon a party injured by another to mitigate the damages which result from such wrongful action. Therefore, where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to terminate the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. For these reasons, particularly close administration over contracts containing liquidated damages provisions is imperative.

(d) When any contract includes a provision for liquidated damages for delay, the Comptroller General, on the recommendation of the Administrator, NASA, is authorized and empowered to remit the whole or any part of such damages as he may consider to be just and equitable. Recommendations concerning remissions of liquidated damages will be forwarded by the contracting officer, with appropriate documentation, via the Director of the field installation to the Director of Procurement for submission to the Administrator.

§ 18–1.311 Construction contracts—disclosure of Government estimate.

(a) Except as provided in paragraph (c) of this section, in contracting for construction, access to or disclosure of information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) If the nature of the information contained in the Government estimate requires security classification, it shall be handled in accordance with applicable security regulations.

(c) When the nature of the information contained in the Government estimate does not require security classification, access to or disclosure of information concerning the Government estimate shall be furnished in accordance with the following:

(1) If the procurement is to be made by means of formal advertising, a copy of the Government estimate shall be sealed and kept locked with the bids until bid opening. Immediately after the bids have been opened, read, and recorded, the estimate shall be opened, read, and recorded in the same manner as the bids.

(2) In the case of a negotiated procurement, after the award has been made, the Government estimate may be furnished to individuals or firms upon their request.

§ 18–1.312 Voluntary refunds.

(a) A voluntary refund is an unconditional payment or credit not required by any contract or other obligation made to the Government by a contractor or subcontractor either as a voluntary payment or as an adjustment under one or more contracts or subcontracts. Contracting officers and other authorized officials shall accept any voluntary refund which is offered. Prime contractors are encouraged to make voluntary refunds and to facilitate the making of such refunds by subcontractors.

(b) Voluntary refunds by a contractor or subcontractor should be made by check payable to the Treasurer of the United States. It is preferred that such checks be submitted to the cognizant contracting officer. In any event, the check shall immediately be forwarded by its recipient to the appropriate fiscal office. When the proper account has been determined, the cognizant contracting officer shall be so notified and the necessary supplementary contractual action will be taken to permit collection as an appropriation refund. Where the proper account cannot be identified, the refund will be transferred to the miscellaneous receipt account in accordance with current fiscal procedures.

§ 18–1.314 Contracting officer's decision under the disputes clause.

When a final decision of the contracting officer involves a dispute that is subject to the procedure of the Disputes clause, or where there is doubt as to whether the decision is subject to such procedure, a paragraph substantially as follows shall be included in such decision:

This is the final decision of the Contracting Officer on the question involved in this dispute. Decisions on disputed questions of fact and on other questions that are subject to the procedure of the Disputes clause may be appealed in accordance with the provisions of the Disputes clause. If you decide to make such an appeal from this decision, written notice thereof (in triplicate) must be mailed or otherwise furnished to the Contracting Officer within thirty days from the date you receive this decision. Such notice should indicate that an appeal is intended and should reference this decision and identify the contract by number. The NASA Board of Contract Appeals is the authorized representative of the Administrator for hearing and determining such disputes. The rules of the NASA Board of Contract Appeals are set forth in Part 18–54 of the NASA Procurement Regulation.

§ 18–1.315 Security requirements.

When NASA contractors or their employees require access to classified information, or originate classified information, at any stage in the performance of NASA contracts, the NASA installation shall follow the security procedures set forth in NASA Management Instruction 24–3–1.

§ 18–1.316 Disclosure of contractor performance data to other government agencies and foreign governments.

(a) Subject to any applicable security requirements, NASA installations shall honor the requests of other Government agencies for readily available information relating to the performance of prime contractors. The agency requesting the information shall be advised that it will be responsible for any further release of such information.

(b) Requests from foreign governments should similarly be honored. When such information is furnished to a foreign government, a copy of the request from the foreign government and the information furnished will be forwarded to the Assistant Administrator for International Programs, NASA Headquarters.

(c) If there is any question as to the propriety of divulging the information to other Government agencies or to any foreign government for any reason, including the security aspect, the request shall be forwarded to the Director of Procurement for consideration, with an explanation of the reasons why the release of such information is questioned. The Director of Procurement will, prior to approving the release of information, obtain the concurrence of:

(1) The General Counsel;

(2) The Assistant Administrator for International Programs, NASA Headquarters, if the request for information is from a foreign government; and

(3) The Director, Security Division, NASA Headquarters, if the information appears to involve a problem of security.

§ 18–1.319 Renegotiation performance reports.

The provisions of this § 18–1.319 are applicable to all controls except, (a) purchase orders made pursuant to the provisions of Subpart 18–3.6; (b) delivery orders placed under Federal Supply Schedule contracts; and (c) those contracts known to be exempt from renegotation.

§ 18–1.319–1 Renegotiation board.

Pursuant to the Renegotation Act of 1951, as amended (50 U.S.C. App. 1211–1233), the Renegotiation Board reviews profits of NASA contractors performing renegotiable contracts and subcontracts aggregating more than $1 million in a fiscal year in order to eliminate any excessive profits therefrom. Such review involves consideration of financial statements and other information furnished by both contractors and NASA.

§ 18–1.319–2 Renegotiation information for contract file.

The contracting officer shall include in the file of each contract information pertaining to the extent and effectiveness of competition obtained in the negotiation and award of the contract, the reasonableness of the prices, fees, and profits negotiated, any incentive and target formulae incorporated in the contract, the extent of risk assumed by the contractor, the contractor's efficiency in performance of the contract, and any other information which would facilitate compilation of the Renegotiation performance reports described in § 18–1.319–3. This is particularly important in the case of incentive-type contracts where the question may be raised as to whether additional profits paid to the contractor by operation of the incentive provisions have been earned. Incentive-type contract information should be complete but succinct. To insure the collection of accurate and detailed information, the aforementioned data shall be included in the contract file as soon as it becomes available.

§ 18–1.319–3 Performance reports.

(a) Performance reports should provide complete, accurate, and objective data to the Renegotiation Board. When the Board requests contractor performance reports, the procuring installation concerned shall furnish information substantially in accordance with the following checklist, including any favorable recommendations giving due credit for better than average contract performance and any unfavorable recommendations because of unsatisfactory performance. Extensive performance data shall be accumulated on incentive-type contracts in sufficient detail so that the report will clearly show, as to the basis for payment of any increments of profit or fee provided as a part of the incentive arrangement in the contract, whether such increments were earned as the result of the contractor's performance or as the result of unreliable cost estimates or unrealistic performance targets when the incentive arrangements were negotiated.

(1) Date of report;

(2) Installation making report;

(3) Source and date of request for report;

(4) Name and address of contractor (if subsidiary or division, show name of parent company);

(5) Period covered by report;

(6) List of contracts being performed during the period concerned, showing as to each:

(i) Contract number;

(ii) Date;

(iii) Total amount of contract;

(iv) Brief description of the scope of work, service, product, etc.;

(v) Method of procurement (advertised or negotiated, and extent of competition);

(vi) Type of contract;

(vii) Total billings during period, and

(viii) Principal place of performance.

(7) Brief description of manufacturing techniques and type of work normally performed by contractor (e.g., production, fabrication, assembly) and relative complexity of the work. State the percentage of work subcontracted;

(8) Information concerning contractor performance, including extent to which:

(i) The product or service exceeded, met, or fell below the contract requirements;

(ii) Delivery schedules were met (indicate reasons for failures to meet schedules, and compliance with requests for early deliveries, if any);

(iii) Rejections and spoilage rates were high or low and reasons therefor;

(iv) Contractor met targets under incentive contracts and reasons therefor;

(v) Contractor was economical in use of materials, facilities, and manpower, and was otherwise effective in controlling production costs;

(vi) Contractor made effective use of his facilities (state whether he expanded facilities to undertake renegotiable business, and if so, was such expansion excessive); and

(vii) Strikes, stoppages, or other significant developments in labor management affected contract performance;

(9) Information concerning reasonableness of costs and profits, including:

(i) The basis for use of a particular type of contract in significant contracts (if an incentive contract, describe also the basis for negotiation of target and cost sharing formulae);

(ii) Adequacy and reliability of cost information furnished by the contractor;

(iii) Unusual risks assumed by contractor in particular contracts, e.g., close pricing, labor and material cost increases, engineering changes, shortage of materials, inventory spoilage and obsolescence, cutbacks, terminations, and quality or performance guarantees (explain extent to which risks were reduced or minimized by types of contracts used);

(iv) Contingencies included in quoted prices;

(v) Experience as to profits received by contractor in significant contracts, especially incentive contracts, with appraisal as to whether or not profits were earned by contractor's efforts (state whether any important contracts were negotiated with no profit or at less than normal profit);

(vi) Significant refunds and voluntary price reductions, with circumstances of each;

(vii) Evaluation of contractor as a high, average, or low cost producer;

(viii) Partial financing by prompt payments under cost-plus-fixed-fee contracts;

(ix) Reasonableness of contractor's pricing policies;

(x) Return on invested capital (where applicable);

(xi) Comparison of prices with competitors' prices for same or similar products or services;

(xii) Reason for cost overruns and underruns in cost-reimbursement type contracts;

(xiii) Assistance given contractor by NASA technical and engineer personnel which reduces the contractor's risk;

(10) List of capital funds and facilities employed by contractor, with particular reference to their source, e.g., contractor's equity capital, borrowed or rented, government-financed, or government-furnished;

(11) Extent to which the contractor has complied with Government policies, such as the small business program, labor surplus area program, competition in subcontracting, "make-or-buy" program, and nondiscrimination;

(12) Full information as to any terminations for default or for the convenience of the Government, to include the status of appeals or claims, if any, and the extent to which payments were made during the period concerned;

(13) Status of price revision actions and the basis for any revision completed in the period concerned;

(14) Such pertinent information on subcontracts, as is available;

(15) Appraisal of contractor's contribution to the aerospace effort, with particular emphasis on work done by him in development of new material, invention of new devices, management of large systems contracts as prime or associate contractor;

(16) A current appraisal of contractor's performance and recommendation as to reasonableness of contractor's profits and fees for the period under consideration under the listed contracts, and

(17) Such other information as may be particularly requested by the Renegotiation Board.

§ 18–1.319–4 Procedures for handling requests for performance reports.

(a) The Renegotiation Board has been requested to submit its requests for performance reports to the Director of Procurement, NASA Headquarters.

(b) Requests for performance reports received by the Director of Procurement will be forwarded to the installation(s) concerned. Where only one installation is involved, that installation will be instructed to submit its report directly to the cognizant regional office of the Renegotiation Board. A copy of such performance report will be forwarded to the Director of Procurement (Code KDM).

(c) Where more than one installation is involved, such installations will be instructed to submit their reports to the Director of Procurement (Code KDM). The Director of Procurement (Code KDM) will review such reports prior to forwarding them to the Renegotiation Board to ensure that the reports are consistent with each other or that discrepancies are appropriately explained.

§ 18–1.350 Nondiscrimination clause—government leases.

§ 18–1.350–1 Policy.

It is NASA policy to include a "Facilities Nondiscrimination" clause in leases on which NASA is the lessee. This policy has been adopted because Federal employees belonging to minority groups and other members of minority groups doing business with the Federal Government in some parts of the country have been denied the use of public facilities located in buildings where the Government leases office space.

§ 18–1.350–2 Use of clause.

The following "Facilities Nondiscrimination" clause shall be incorporated in all future leases where (a) the total rental is in excess of $10,000 per year, or (b) the total rental under the new lease, combined with the total rental under all other NASA leases of space in the same building, exceeds $10,000 per year.

FACILITIES NONDISCRIMINATION (AUGUST 1968)

(1) As used in this clause, the term "facility" means stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

(2) The lessor agrees that he will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants, their employees, customers, patients, clients, guests, and invitees.

(3) It is agreed that the lessor's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's buildings as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

(4) It is agreed that from and after the date hereof the lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of, the foregoing provisions of this clause in every such agreement or concession pursuant to which any person other than the lessor operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require the lessor to include or require the inclusion of the foregoing provisions of this clause in any existing agreement or concession arrangement or one in which the contracting party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until

the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The lessor also agrees that he will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as NASA may direct as a means of enforcing the intent of this clause, including, but not limited to, termination of the agreement or concession and institution of court action.

§ 18–1.350–3 Lease amendments and renewals.

(a) Prior to executing any amendment to a lease or exercising a lease renewal option, where the total rental exceeds $10,000 per year, the lessor shall be requested to enter into a supplemental agreement to incorporate in the lease, as part of the rental consideration, the "Facilities Nondiscrimination" clause set forth in § 18–1.350–2.

(b) The "Facilities Nondiscrimination" clause shall also be incorporated when the total aggregate rental of multiple NASA leases in a building is in excess of $10,000 per year.

(c) If agreement cannot be reached, the matter shall be submitted to the Director of Procurement with the recommendations of the Director of the installation, at least 30 days prior to the date on which the amendment is to be executed or the notice of renewal must be issued.

§ 18–1.350–4 Invitation for bids or request for proposals involving leases.

The "Facilities Nondiscrimination" clause, as set forth in § 18–1.350–2, shall be preceded by a paragraph substantially as follows, in all invitations for bids or requests for proposals involving leases:

If the total rental under this lease exceeds $10,000 per year, or if the total rental under this lease combined with the total rental under all other NASA leases of space in the building in which the space covered by this lease is located exceeds $10,000 per year, the lessor agrees to comply with the following provisions: (AUGUST 1963)

§ 18–1.350–5 Deviations.

Any proposed deletions or changes in the foregoing provisions required by this section shall be processed as deviations in accordance with § 18–1.109.

Subpart 18–1.5—Contingent or Other Fees

§ 18–1.500 Scope of subpart.

This subpart sets forth the procedures to be followed and prescribes the form to be used for obtaining information concerning contingent or other fees paid by contractors for soliciting or securing contracts.

§ 18–1.502 Applicability.

This subpart applies to all contracts.

§ 18–1.503 Covenant against contingent fees clause.

Every contract, except when Standard Forms 19 and 19A are used for formally advertised construction contracts, shall contain the following clause:

COVENANT AGAINST CONTINGENT FEES (FEBRUARY 1962)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

§ 18–1.504 Improper influence.

The term "improper influence" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

§ 18–1.505 General principles and standards applicable to the covenant.

The principles and standards set forth in this subpart are intended to be used as a guide in the negotiation, award, administration, and enforcement of all contracts.

§ 18–1.505–1 Contingent character of the fee.

Any fee, whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

§ 18–1.505–2 Exceptions to the prohibition of the covenant.

Excepted from the prohibition of the covenant are "bona fide employees" and "bona fide established or selling agencies maintained by the contractor for the purpose of securing business."

§ 18–1.505–3 Bona fide employee.

The term "bona fide employee," for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed in good faith by a concern to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in § 18–1.505–4, except paragraph (d) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant. (However, in applying such factors, the word "employee" shall be substituted for the word or words "agent" and "selling agency" as they appear throughout § 18–1.505–4, except paragraph (d) thereof.)

(a) A person may be a bona fide employee whether his compensation is on a fixed salary basis or, when customary in the trade, on a percentage, commission, or other contingent basis or a combination of the foregoing.

(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

§ 18–1.505–4 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth in paragraphs (a) through (e) of this section shall be considered. They are necessarily incapable of exact measurement or precise definition, and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as aganist all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(a) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, the services of the agent other than actual solicitation should be considered; for example, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

(b) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(c) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify a newly established contractor-

agent relationship where a continuing relationship is contemplated by the parties.

(d) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indications of the conduct of a regular business.

(e) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities, is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized. However, any agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.

§ 18–1.505–5 Fees for information.

Contingent fees paid for information leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

§ 18–1.506 Representation and agreement required from prospective contractors.

(a) Except as provided in § 18–1.507–2, contracting officers shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer.

(b) When an invitation for bids is issued, the requirements of paragraph (a) of this section shall be accomplished by requiring the bidder to check the appropriate boxes in the following statement to be included in the invitation or bid form (also, see § 18–1.507–50):

Bidder or offeror represents: (a) that he [ ] has, [ ] has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder or offeror) to solicit or secure this contract, and (b) that he [ ] has, [ ] has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder or offeror) any fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.) (January 1964)

(c) When a procurement is to be effected by negotiation, the requirements of paragraph (a) of this section will be accomplished by requiring the offeror either to (1) check the appropriate boxes in the above statement, or (2) execute a written representation which substantially conforms with the above statement. This may be accomplished by including the above statement in the request for proposals or quotations or by obtaining an appropriate statement during the course of negotiations (also see § 18–1.507–50).

§ 18–1.506–1 Interpretation of the representation.

(a) For the purpose of the representation and agreement required from the prospective contractor, as described in § 18–1.506, the definition of "bona fide employee" is as specified in §18–1.505–3.

(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retainer.

(c) If the representation would otherwise be answered in the affirmative, the fact that the person employed or retained by the bidder or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answering in the negative.

§ 18–1.507 Use of Standard Form 119.

Except as provided in § 18–1.507–2, Standard Form 119 shall be used without deviation when either part of the inquiry provided for by § 18–1.506 is answered in the affirmative. The form shall also be used without deviation in any other case when the contracting officer desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Normally, submission of the form will be required only of successful bidders and contractors.

§ 18–1.507–1 Statement in lieu of form.

Any bidder or proposed contractor who has previously furnished a Standard Form 119 to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid with, or submit in connection with the proposed contract, a signed statement:

(a) Indicating when such completed form was previously furnished;

(b) Identifying by number the previous invitation or contract in connection with which such form was submitted; and

(c) Representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required. See § 18–1.507–50.

§ 18–1.507–2 Exceptions.

The inquiry and agreement specified in § 18–1.506 need not be made and submission of Standard Form 119 need not be requested in connection with the following:

(a) Any advertised contract in which the aggregate amount involved does not exceed $25,000;

(b) Any negotiated contract in which the aggregate amount involved does not exceed $5,000;

(c) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed $25,000;

(d) Any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis;

(e) Any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply; and

(f) Contracts to be made in foreign countries.

§ 18–1.507–50 Additional provision.

(a) In addition to the statement to be included in the invitation or bid form required by § 18–1.506, contracting officers may add the following provision to the invitation or bid form:

If the bidder, by checking the appropriate box provided therefor in his bid, has represented that he has employed or retained a company or person (other than a full-time bona fide employee) to solicit or secure this contract, he may be requested by the Contracting Officer to furnish with his bid a completed Standard Form No. 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract). If the bidder has previously furnished a complete Standard Form No. 119 to the office issuing this invitation for bids, he may accompany his bid with a signed statement, in lieu of Standard Form 119, (a) indicating when such completed Form was previously furnished; (b) identifying by number the previous invitation or contract in connection with which

such Form was submitted; and (c) representing that the statements in such previously furnished Form are applicable to this bid. (February 1962)

(b) The statement, in paragraph (a) of this section, suitably modified, may be included in the request for proposals or quotations, in addition to the statement provided for in § 18–1.506(c).

§ 18–1.508 Enforcement.

The contracting officer shall take the necessary steps to ensure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as prescribed in § 18–1.506.

(a) If the indicated successful bidder or proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted in accordance with the procedures set forth in this chapter.

(b) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with the procedures set forth in this chapter need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract, unless the Director of Procurement considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(c) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement as set forth in § 18–1.506, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement after such opportunity has been afforded shall require rejection of the bid or offer.

§ 18–1.508–1 Failure or refusal to furnish Standard Form 119.

If the otherwise successful bidder or contractor, upon request, fails or refuses to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in § 18–1.507–1, one of the following actions shall be taken:

(a) If an award has not been made or an offer accepted, the matter shall be referred to the procurement officer for a determination as to whether the bid or offer should be rejected; or

(b) If the contract has been awarded or offer accepted, the matter shall be referred to the Director of Procurement, supported by a statement and summary of all pertinent facts and appropriate recommendations, for a determination as to what actions should be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor.

§ 18–1.508–2 Misrepresentations or violations of the covenant against contingent fees.

In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, one or more of the following actions shall be taken:

(a) If an award has not been made or an offer accepted, the matter shall be referred to the procurement officer for a determination as to whether the bid or offer should be rejected; or

(b) If an award has been made or an offer accepted, the matter shall be referred to the Director of Procurement, supported by a statement and summary of all pertinent facts and appropriate recommendations, for a determination as to what actions should be taken, such as—

(1) Enforcing the covenant in accordance with its terms; that is, as the best interest of the Government may appear, annul the contract without liability or recover the full amount of the fee involved;

(2) Considering the eligibility of the contractor as a future contractor; or

(3) Referring the case to the Department of Justice.

§ 18–1.509 Preservation of records.

Contracting officers shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119, or statement in lieu of the form, with a record of any other pertinent data, including data as to action taken.

§ 18–1.550 Responsibility for protecting information contained in completed Standard Form 119.

Information contained in completed Standard Form 119 shall be considered private and personal. Personnel having access to this information shall not discuss or transmit the information gained by them to any other person not entitled or authorized to have access to such information.

Subpart 18–1.6—Debarred, Ineligible, and Suspended Bidders

§ 18–1.600 Scope of subpart and definitions.

§ 18–1.600–1 Scope.

This subpart prescribes policies and procedures relating to the debarment of bidders for any cause, ineligibility of bidders under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)), and the suspension of bidders for alleged fraud or other criminal conduct.

§ 18–1.600–2 Definition of affiliates.

Business concerns are considered affiliates of each other when, either directly or indirectly:

(a) One concern or individual controls or has the power to control another; or

(b) A third party controls or has the power to control both.

In determining whether concerns are independly owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors, including common ownership, common management, and contractual relationships.

§ 18–1.601 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

§ 18–1.601–1 General.

NASA shall establish and maintain a list of firms and individuals whom it has debarred or suspended, to whom contract awards of any character, including sales, will not be made, and from whom bids or proposals will not be solicited as provided in this subpart. This list will supplement the Joint Consolidated List referred to in § 18–1.601–3. The Office of Procurement (Code KDP) is responsible for the establishment and maintenance of the NASA list and will issue copies of this list to each procurement office.

§ 18–1.601–2 Information contained in NASA list.

The NASA list shall show as a minimum the following information:

(a) The names (in alphabetical order) of those firms or individuals debarred, ineligible, or suspended with appropriate cross-references where more than one name is involved in a single action;

(b) The basis of authority for each action;

(c) The extent of restrictions imposed; and

(d) The termination date for each debarred listing.

§ 18–1.601–3 Joint consolidated list.

The Department of the Army is responsible, as prescribed in 32 CFR 1.601–3, for the issuance of a Joint Consolidated List of firms and individuals ineligible, disqualified, debarred, suspended, or otherwise prohibited from entering into contractual relationship with the Departments of the Army, the Navy, and the Air Force. For the purposes of economy and uniformity, since the Military Departments contract essentially with the same segments of industry as NASA, the Joint Consolidated List is hereby adopted by NASA for its use, as supplemented by the list established and maintained by NASA. The Joint Consolidated List contains, as a minimum, the same type of information included in the NASA list (see § 18–1.601–2). Arrangements have been made with the Department of the Army to furnish NASA Headquarters with copies of the Joint Consolidated List. The Office of Procurement (Code KDP) will issue copies of this list to each procurement office.

§ 18–1.601–4 Protection of lists.

The NASA list shall be marked with and treated in accordance with the protective term, "Limit Access to Government Personnel," unless details are

included which require a security classification. The Joint Consolidated List shall be treated in accordance with the protective term set forth thereon and shall be protected to prevent inspection of the contents by anyone other than Government personnel required to have access thereto. All correspondence relating to the NASA list and the Joint Consolidated List shall be marked and treated in accordance with the protective term, "Limit Access to Government Personnel," unless details are included which require a security classification, except that correspondence furnished to firms or individuals in accordance with § 18–1.604–4 or § 18–1.605–6 will not include any protective markings.

§ 18–1.601–50 Authority for making determinations.

(a) The Administrator or his authorized representative shall, upon appropriate recommendation, determine whether a firm or individual will be administratively debarred or suspended and included in the NASA list. The Administrator, by NASA Management Instruction 3–3–5, has designated the Director of Procurement as an authorized representative of the Administrator for the purpose of making final determinations in respect to NASA debarments made pursuant to §§ 18–1.603(a)(1)(iii) and 18–1.604–1(b) and suspensions made pursuant to §§ 18–1.603(a)(4) and 18–1.605–2(b), including modifications and removals thereto. The debarment or suspension of firms or individuals is an administrative determination within the discretion of the Administrator or his authorized representative and each case will be decided upon its individual merits. The placement of a firm or individual on the list will be for the purpose of protecting the interest of the Government and not for punishment.

(b) In taking any action to debar or suspend a firm or an individual, the Director of Procurement will refer the proposed action to the Director, Inspections Division, NASA Headquarters, for comment and any necessary investigation. In addition, such action will be coordinated with the General Counsel and other staff offices or divisions, as appropriate.

§ 18–1.601–51 Compliance with NASA list and joint consolidated list.

NASA procurement personnel shall comply with the prohibitions contained in the NASA list and the Joint Consolidated List.

§ 18–1.602 Limitation.

No firm or individual will be included on the NASA list for causes or conditions other than those set forth in this subpart.

§ 18–1.603 Grounds for listing and treatment to be accorded listed concerns.

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

(1) Type A includes debarments in any of the following categories:

(i) Those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(ii) Those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 276a–2(a)) for violating the requirements of that Act; and

(iii) Those whom the Administrator or his authorized representative has determined to debar for any of the causes and under all of the conditions set forth in § 18–1.604.

Bids or proposals shall not be solicited from, nor invitations for bids or requests for proposals furnished to, nor contracts awarded to, firms or individuals who are listed as Type A and who are debarred because of Walsh-Healey or Davis-Bacon violations (subdivisions (i) and (ii) of this subparagraph). The same rules apply with respect to Type A listings within subdivision (iii) of this subparagraph, except as set forth in paragraph (d) of this section, or unless the listing indicates that the debarment is not to apply to procurement contracts or sales contracts (see § 18–1.606).

(2) Type B includes firms or individuals whom the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of $10,000 shall not be awarded to firms or individuals under Type B listings for those materials, articles, or equipment with respect to which the firm or individual has been found to be ineligible. NASA, as a matter of policy, applies the same rule to contracts of $10,000 or less. However, bids or proposals may be solicited, and contracts in any amount may be awarded, for commodities with respect to which the firm or individual has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listings only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers, from receiving contracts subject to the Walsh-Healey Public Contracts Act.

(3) Type C includes firms or individuals whom the Administrator, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the Buy American Act clause required for construction contracts (see § 18–6.205 of this chapter). Bids or proposals for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be solicited from firms or individuals under Type C listings; nor shall contracts for such work be awarded to such firms or individuals. However, firms or individuals under Type C listings may be solicited for bids or proposals and may be awarded contracts for other than the construction, alteration, or repair of public buildings or public works.

(4) Type D includes firms or individuals whom the Administrator or his authorized representative has determined to suspend for any of the causes and under all of the conditions set forth in § 18–1.605. Firms or individuals under Type D listings shall not be solicited for bids or proposals, nor awarded contracts, except as set forth in paragraph (d) of this section, or where the listing indicates that the suspension does not apply to procurement contracts or sales contracts (see § 18–1.606).

(5) Type E includes firms or individuals who have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes:

(i) Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276(c));

(ii) Work Hours Act of 1962 (40 U.S.C. 327–332);

(iii) National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703);

(iv) Hospital Survey and Construction Act (60 Stat. 1040);

(v) Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101);

(vi) Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441);

(vii) School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251);

(viii) Federal Civil Defense Act of 1950 (64 Stat. 1245) as amended (50 U.S.C. 1245);

(ix) Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591); and

(x) Area Redevelopment Act of 1961 (75 Stat. 47) (42 U.S.C. 2501).

Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

(6) Type F includes firms or individuals who have been designated by notification from the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity (hereinafter, in this subpart, called "the Chairman") as ineligible for Government contracts for noncompliance with the Equal Opportunity in Federally Assisted Contracts clause or Equal Opportunity clause. See § 18–12.802 of this chapter (and §§ 60–1.26, 60–1.27, and 60–1.31 of the rules and regulations of the President's Committee on Equal Employment Opportunity, as amended December 14, 1961, hereinafter in this Subpart 18–1.6 called "the Rules"). Except as otherwise provided in the notification from the Chairman, no contracts with such firms or individuals shall be entered into, extended, or modified until notification has been received from the Chairman that the eligibility of such

firms or individuals has been reestablished (Section 312(e), Subpart D, E.O. 10925, March 7, 1961 (3 CFR 1959–1963 Comp.).

(b) Administration of current contracts in all phases may be continued with a firm or individual, notwithstanding the listing of such firm or individual, unless otherwise prescribed by the Administrator or his authorized representative. However, payment of all or any part of funds due or to become due shall be withheld when such action is determined to be in the best interest of the Government by the Administrator or his authorized representative. When it appears necessary to withhold payments to protect the interests of the Government, action to withhold payment under the contract shall be initiated promptly by the contracting officer and the matter shall be referred to the Office of Procurement for decision. No payments shall be made pending this decision.

(c) When a listed firm or an individual is proposed as a subcontractor, the contracting officer shall decline to consent to subcontracting with such firm or individual in any instance in which consent is required of the Government before the subcontract is made. If award of a subcontract to a listed firm or individual is considered in the best interest of the Government, the contracting officer, prior to approving such award, shall submit a written recommendation to the Office of Procurement, citing complete and detailed justification for the award. Based on such justification, the Director of Procurement may authorize an exception to the restrictions imposed by the listings. In the case of subcontracts already in effect, prime contractors may not be required to terminate subcontracts with a listed firm or individual unless provisions of the prime contract reserve to the Government such control over subcontracting permitting the Government to require their termination. If the Government has such control, the contracting officer shall decide whether such subcontracts should be continued or terminated and forward his recommendations to the procurement officer (see § 18–1.226) for an appropriate determination. The procurement officer shall decide whether it is in the best interests of the Government to continue or terminate such subcontracts, unless otherwise prescribed by the Director of Procurement.

(d) The Administrator or his authorized representative may authorize exceptions to the restrictions imposed by Type A(iii) listings and Type D listings, including Type A(iii) listings and Type D listings contained in the Joint Consolidated List, when it is determined that such action is in the best interest of the Government. In such cases, when it is considered necessary or advisable to solicit bids or proposals from, or to award a contract to, a listed firm or individual, the contracting officer shall submit a written recommendation to the Office of Procurement, citing complete and detailed justification for the proposed action. The recommendation will be based on such factors as (1) urgent delivery or performance schedules, or (2) inability to secure the supplies or services from other sources due to lead time, proprietary data, or lack of procurement data.

§ 18–1.604 Debarment of bidders.

§ 18–1.604–1 Authority in NASA to debar firms and individuals.

(a) The Administrator may, in the public interest, debar a firm or individual for any of the clauses set forth in § 18–1.604–2.

(b) The Director of Procurement, as an authorized representative of the Administrator, is authorized to debar in the public interest a firm or an individual for any of the causes set forth in § 18–1.604–2, except for paragraph (c) thereof, in accordance with the procedures set forth in this Subpart 18–1.6.

§ 18–1.604–2 Causes for debarment.

(a) Conviction by or a judgment obtained in a court of competent jurisdiction for:

(1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids or proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense and all mitigating factors shall be considered in making the decison to debar.

(b) Clear and convincing evidence of violation of contract provisions, as set forth below, when the violation is of a character so serious as to justify debarment action:

(1) Willful failure to perform in accordance with the specifications or delivery requirements in a contract;

(2) A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: *Provided,* That such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar (failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment); or

(3) Violation of the contractual provision against contingent fees.

(c) Any other causes affecting responsibility as a Government contractor of such serious and compelling nature as may be determined by the Administrator to justify debarment: *Provided,* That no firm or individual shall be debarred for failure to comply with the Equal Opportunity in Federally Assisted Construction clause or Equal Opportunity clause, except upon notification by the Chairman (41 CFR 60–1.24(b)(3)).

(d) Debarment for any of the above causes by some other executive agency of the Government. Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts of the original debarring agency.

§ 18–1.604–3 Period and scope of debarment.

(a) *Period of debarment.* All debarments by NASA shall be for a reasonable, specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment will not exceed three years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period of any firm or individual who has been debarred by NASA for any of the causes set forth in § 18–1.604–2, the Director of Procurement will cause all of the facts and circumstances relating to the debarment to be reviewed. The debarment shall be removed at the expiration of the specified period, unless, on the basis of an evaluation of newly developed facts, it is determined that debarment for an additional period is required in order to protect the Government's interests. Where debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished the firm or individual in accordance with § 18–1.604–4. The debarment of a firm or individual may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the Equal Opportunity in Federally Assisted Construction clause or Equal Opportunity clause (Type F), the names of such firms or individuals shall be removed from the NASA list (§ 18–1.601–1) upon receipt of notification from the Chairman that the eligibility of such firms or individuals has been reestablished (41 CFR 60–1.28 and 60–1.31).

(b) *Scope of debarment.* (1) Debarment may include all known affiliates of a firm or individual. For the definition of an affiliate, see § 18–1.600–2.

(2) An attempt shall be made to determine who are the affiliates of any firm or individual who is proposed to be debarred. Consideration shall be given to intiating debarment against such affiliates whenever the facts and circumstances justify debarment of the firm or individual concerned would also justify debarment of such affiliates.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected whenever the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

§ 18–1.604–4 Notice of debarment.

(a) The firm or individual proposed for debarment shall be furnished with a written notice of the proposed debarment by the Director of Procurement, stating as a minimum:

(1) The fact that debarment is being considered;

(2) The reasons for the proposed debarment; and

(3) The period of time to be afforded to present information for consideration.

Information in opposition to a proposed debarment may be presented in person, in writing, or through representation. The period of time to be afforded to present information for consideration shall be limited to 30 days unless the firm or individual requests and justifies additional time. When no additional time is requested, the debarment determination, including the notice to the firm or individual, shall be completed within 90 days. When additional time is requested and it is determined to grant such additional time, the 90-day period shall be adjusted accordingly. If the firm or individual is not under suspension, pursuant to § 18–1.605, the notice of proposed debarment will inform the firm or individual that no contracts shall be awarded to such firm or individual pending the debarment determination.

(b) If the firm or individual proposed for debarment has affiliates who are also proposed to be debarred, the procedures set forth in paragraph (a) of this section shall be applied to such affiliates.

(c) If debarment is effected, the firm or individual and the affiliates that have been debarred will be notified by the Director of Procurement, in writing, within 10 days after determination of debarment has been made. This notice will:

(1) Reference the earlier notice of proposed debarment;

(2) Specify the reasons for debarment; and

(3) State the period of debarment, including effective dates.

If, following the notice of proposed debarment, a determination is made that debarment will not be effected, the Director of Procurement will notify the firm or individual in writing accordingly.

(d) Copies of the notice of debarment and of any removals from such debarment will be furnished to the General Services Administration.

(e) All inquiries or correspondence from or in behalf of debarred contractors concerning their status, reasons for debarment action, etc., shall be forwarded to the Office of Procurement (Code KDP) for appropriate action.

§ 18–1.604–50 Reporting procedures.

(a) Procurement officers may submit reports recommending debarment of a firm or individual for any of the causes set forth in § 18–1.604–2. Such actions shall be coordinated with local counsel.

(b) Reports recommending debarment shall be submitted in triplicate to the Office of Procurement (Code KDP). Each such report shall contain a complete statement of the facts concerning the firm's or individual's dereliction, including affidavits, depositions, records of action, if applicable, and any other relevant data. Names and addresses of all persons having knowledge of the circumstances shall be included. Such reports shall include the names and addresses of all known affiliates of reported firms or individuals, together with the nature of such affiliation.

§ 18–1.605 Suspension of bidders.

§ 18–1.605–1 General.

Suspension of a firm or an individual is a drastic action which must be based upon adequate evidence rather than mere accusation. In assessing adequate evidence, consideration should be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences which may be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. The suspension of a firm or individual is an administrative determination which may be modified when determined to be in the interest of the Government.

§ 18–1.605–2 Authority in NASA to suspend firms or individuals.

(a) The Administrator may, in the interest of the Government, suspend a firm or individual for any of the causes set forth in § 18–1.605–3.

(b) The Director of Procurement, as an authorized representative of the Administrator, is authorized to suspend in the interest of the Government a firm or individual for any of the causes set forth in § 18–1.605–3, except for paragraph (2) thereof, in accordance with the procedures set forth in this Subpart 18–1.6.

§ 18–1.605–3 Causes for suspension.

A firm or individual may be suspended, whenever such suspension is determined to be in the interest of the Government, for the following causes:

(a) Whenever the firm or individual is suspected of—

(1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor.

(b) Any other causes of such serious and compelling nature as may be determined to justify suspension: *Provided,* That no firm or individual shall be suspended for failure to comply with the Equal Opportunity in Federally Assisted Construction Contracts clause or Equal Opportunity clause, except upon notification by the Chairman (41 CFR 60–1.24(b)(3)).

§ 18–1.605–4 Period and scope of suspension.

(a) *Period of suspension.* All suspensions made by NASA shall be for a temporary period pending the completion of investigations and such legal proceedings as may ensue.

(1) In the event a firm or individual is suspended for any cause set forth in § 18–1.605–3(1) and prosecutive action is not initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General requests continuation of the suspension. If such a request is received, the suspension may be continued for an additional 6 months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12-month period. In no event shall suspension continue beyond 18 months unless prosecutive action has been initiated within that period. Where prosecutive action is initiated, the suspension may continue until legal proceedings are completed.

(2) In the event a firm or an individual is suspended by the Administrator for any cause in accordance with § 18–1.605–3(2), the period of suspension shall not exceed 90 days. The period of suspension may be extended for additional periods of 90 days upon a determination by the Administrator of the reasons and necessity therefor. However, in no event shall the total of any suspension under this § 18–1.605–4 exceed one year or be in addition to any period of suspension under subparagraph (1) of this paragraph.

(3) Upon the completion of the legal proceedings under subparagraph (1) of this paragraph or investigation under subparagraph (2) of this paragraph the suspension shall be removed and, if appropriate, changed to a debarment in accordance with § 18–1.604–2(a). Firms or individuals released from suspension and not debarred shall be replaced on appropriate bidders lists.

(b) *Scope of suspension.* (1) Suspension may include all known affiliates of a firm or individual. For the definition of an affiliate, see § 18–1.600–2.

(2) An attempt shall be made to determine who are the affiliates of any firm or individual who is proposed to be suspended. Consideration shall be given to suspending such affiliates whenever the facts and circumstances justifying suspension of the firm or individual concerned would also justify suspension of such affiliates.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected whenever the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

§ 18–1.605–5 Restrictions during period of suspension.

Suspended firms or individuals shall be subject to the provisions of §18–1.603 (a) (4), (b), and (c).

§ 18–1.605–6 Notice of suspension.

(a) The firms or individuals who have been suspended will be furnished a written notice, by the Director of Procurement, of the suspension within 10 days after the effective date of the suspension. The notice of suspension will state:

(1) That the suspension is based on information that the firm or individual has committed irregularities of a serious nature in business dealings with the Government or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government, together with a description of the nature of those irregularities, in general terms, without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

(3) That bids and proposals will not be solicited from such firms or individuals and if received will not be considered, and awards of contracts may not be made, unless it is determined to be in the best interest of the Government by the Administrator or his authorized representative to do so.

(b) Copies of the notice of suspension and of any removal from such suspension shall be furnished to the Department of Justice.

(c) All inquiries or correspondence from or in behalf of suspended firms and individuals concerning their status, reasons for suspension, and so forth, shall be forwarded to the Office of Procurement (Code KDP) for appropriate action. Information beyond that stated in the notice of suspension concerning the reasons for suspension shall not be furnished to the contractor or his representatives until the Department of Justice has been advised of the inquiry.

§ 18–1.605–50 Reporting procedures.

(a) Procurement officers may submit reports recommending suspension of a firm or individual for any of the causes set forth in § 18–1.605–3. Such actions shall be coordinated with local counsel.

(b) Reports recommending suspension shall be submitted in triplicate to the Office of Procurement (Code KDP). Such reports shall contain a complete statement of the pertinent facts indicating alleged criminal conduct, fraudulent activity, or suspicion thereof, and shall be supported by appropriate exhibits, including copies of any contracts involved and any assignments of claims thereunder. Such reports shall include the names and addresses of all known affiliates of reported firms or individuals, together with the nature of such affiliation.

§ 18–1.606 Limited debarment or suspension.

When it is determined to debar or suspend a concern pursuant to § 18–1.604 or 18–1.605, the Administrator or his authorized representative shall decide whether the debarment or suspension should extend to procurement contracts or sales contracts or to both. If the debarment or suspension is limited to either procurement contracts or sales contracts, the listing should so indicate.

§ 18–1.607 Interchange of debarment information.

(a) The General Services Administration, in accordance with FPR 1–1.607(a), is charged with compiling from the notice of debarments furnished it by NASA and other executive agencies a combined list of such debarments, including the basis of action, and distributing a copy of such list to NASA and all other executive agencies.

(b) The list furnished by General Services Administration shall be for information purposes only; it is not intended to take the place of, or be an addition to, the lists used by NASA.

(c) The Office of Procurement will check the combined list of debarred bidders furnished by the General Services Administration and consider firms or individuals listed thereon for inclusion upon the NASA list, in accordance with the provisions of this Subpart 18–1.6.

(d) On specific request of the Director of Procurement, the General Services Administration has agreed to furnish to NASA, in accordance with FPR 1–1.607 (b), a copy of the notice reflecting the basis for debarment action taken by another agency pursuant to its regulations or under the Buy American Act (41 U.S.C. 10a–d) (see § 18–1.603(a)(3) Type C listing). If desired, the Director of Procurement may make a direct inquiry concerning any debarment case to the agency which originated the action.

Subpart 18–1.7—Small Business Concerns

§ 18–1.700 Scope of subpart.

(a) To implement the Small Business Act of 1958, as amended (15 U.S.C. 631–647), and the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451–2459), this subpart sets forth:

(1) Policy regarding small business concerns;

(2) Policy governing relationships with the Small Business Administration;

(3) Small business set-aside procedures;

(4) Small business subcontracting policies;

(5) Procedures concerning use of Small Business Administration certificates of competency; and

(6) Information concerning size standards of the Small Business Administration.

(b) This Subpart § 18–1.7 applies only in the United States, its possessions and Puerto Rico.

§ 18–1.701 Definitions.

The definitions of small business concerns are promulgated by the Small Business Administration (SBA). As used throughout this subpart, the following terms shall have the meanings set forth below.

§ 18–1.701–1 Small business concern.

(a)(1) *General definition.* A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and, with its affiliates, can further qualify under the criteria set forth in subparagraphs (2) and (3) of this paragraph. "Concern" means any business entity organized for profit with a place of business in the United States, its possessions or Puerto Rico, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative.

(2) *Industry small business size standards.* In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the appropriate small business size standards established for the industries set forth in subdivisions (i) through (v) of this subparagraph. Contracting officers shall use the Standard Industrial Classification Manual, including the 1963 supplement thereto, prepared by the Bureau of the Budget, as a guide to determine the appropriate industry classification for each item or service to be procured. When an item is classified into two or more industries with different small business size standards, the smallest of such size standards shall be used. When more than one item is being procured and two or more industries with different size standards are involved, the bidder must meet the small business size standard for each item for which he submits a bid. Contracting officers may obtain advice from the SBA Regional Office serving the area in which the procurement office is located, when in doubt concerning the appropriate small business size standard to be prescribed for a particular procurement. The term "annual receipts" as used throughout this Part 18–1 means the annual receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year.

(i) *Construction industries.* In bidding on a contract for construction, alteration, or repair (including painting and decorating) of buildings, roads, or other real property, the average annual receipts of the concern and its affiliates for its preceding three fiscal years must not exceed $7,500,000, except that if the concern is located in Alaska, such receipts must not exceed $9,375,000. In bidding on a contract for dredging, the average annual receipts of the concern and its affiliates for its preceding, three fiscal years must not exceed $5,000,000, except that if the concern is located in Alaska, such receipts must not exceed $6,250,000.

(ii) *Manufacturing industries—(a) Food canning and preserving industry.* In bidding on a contract for food canning and preserving, the number of employees

of the concern and its affiliates must not exceed 500 persons exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(K).

(b) *Petroleum industry.* In bidding on a contract for petroleum, other than lubricants and miscellaneous petroleum products, the number of employees of the concern and its affiliates must not exceed 1,000 employees and it must not have more than 30,000 barrels per day crude oil capacity from owned or leased facilities. ("Crude oil capacity" means the maximum daily average crude throughput of a refinery in complete operation with allowances for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.)

(c) *Manufacturing industries listed in § 18–1.701–4.* In bidding on a contract for a product classified within an industry listed in § 18–1.701–4, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

(d) *Manufacturing industries not listed in § 18–1.701–4.* In bidding on a contract for a product classified within an industry not set forth in this subdivision (ii) or in § 18–1.701–4, the number of employees of the concern and its affiliates must not exceed 500 persons.

(iii) *Nonmanufacturing industry.* One who submits bids or offers in his own name but who proposes to furnish a product not manufactured by himself shall be deemed to be a small business concern only if (a) he is a small business concern within the meaning of § 18–1.701–1, (b) he employs not more than 500 persons, and (c) in the case of a procurement set-aside for small business (see § 18–1.706) or involving equal low bids (see § 18–2.407–6 of this chapter), or otherwise involving the preferential treatment of small business, he agrees to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this subdivision does not apply to construction or service contracts. However, if the goods to be furnished are wool, worsted, knitwear, duck, webbing, and thread (spinning and finishing), nonmanufacturers (dealers and converters) shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher.

(iv) *Services industries.* In bidding on a contract for services not elsewhere defined in this section, the average annual sales or receipts of the concern and its affiliates for the preceding three fiscal years must not exceed $1,000,000 ($1,250,000 if located in Alaska).

(v) *Transportation industry*—(a)—*General.* Except as provided in (a) and (b) of this subdivision, in bidding on a contract for passenger or freight transportation the number of employees of the concern and its affiliates must not exceed 500 persons.

(b) *Air transportation.* In bidding on a contract for air transportation, the number of employees of the concern and its affiliates must not exceed 1,000 persons.

(c) *Trucking and/or warehousing industry.* In bidding on a contract for trucking and/or warehousing, the annual receipts of the concern and its affiliates must not exceed $3,000,000 except that if the concern is located in Alaska, such receipts must not exceed $3,750,000. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its relationship with an interstate van line, if (I) the concern's annual receipts have not exceeded $3,000,000 during its most recently completed fiscal year ($3,750,000 if located in Alaska), and (II) not more than fifty percent (50%) of such annual receipts are directly attributable to the concern's relationship with an interstate van line.

(3) *Small business subcontractors.* In connection with subcontracts of $2,500 or less, any concern shall be considered a small business concern if it, with its affiliates, has not more than 500 employees. In connection with subcontracts exceeding $2,500, any concern shall be considered a small business concern if it qualifies as such under subparagraphs (1) and (2) of this paragraph.

(b) *Dominance in field of operations.* A concern is not "dominant in its field of operations" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration is given to all appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, facilities, sales territory, and nature of business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship.

(d) *Number of employees.* In connection with the determination of small business status, except as the SBA otherwise determines in a particular industry or part thereof, "number of employees" means the average employment of any concern including the employees of its domestic and foreign affiliates based on the number of persons employed on a full-time, part-time, temporary, or any other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "numbers of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

§ 18–1.701–4 Manufacturing industry employment size standards.

The Standard Industrial Classification Manual (and the 1963 supplement thereto) index provides an alphabetical list of products and the industry with which the product is associated. The following schedule sets forth the industry size standards for the purpose of Government procurements.

Classification code	Industry	Employment Size Standard (Number of employees)[1]
	Major Group 19—Ordnance and Accessories	
1925	Guided missiles and space vehicles, completely assembled	1000
1931	Tanks and tank components	1000
1951	Small arms	1000
1961	Small arms ammunition	1000
	Major Group 20—Food and Kindred Products	
2032	Canned specialties	1000
2043	Cereal preparations	1000
2046	Wet corn milling	750
2052	Biscuit, crackers, and pretzels	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2085	Distilled, rectified, and blended liquors	750
2093	Vegetable oil mills, except cottonseed and soybean	1000
2096	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified	750
	Major Group 21—Tobacco Manufacturers	
2111	Cigarettes	1000
	Major Group 22—Textile Mill Products	
2211	Broad woven fabric mills, cotton	1000
2271	Woven carpets and rugs	750
2296	Tire cord and fabric	1000
	Major Group 26—Paper and Allied Products	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	Major Group 28—Chemicals and Allied Products	
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2815	Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners)	750
2816	Inorganic pigments	1000
2818	Industrial organic chemicals, not elsewhere classified	1000
2819	Industrial inorganic chemicals, not elsewhere classified	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulose man-made fibers	1000
2824	Synthetic organic fibers, except cellulosic	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2892	Explosives	750

See footnote at end of table.

Classification code	Industry	Employment Size Standard (Number of employees)[1]
	Major Group 29—Petroleum Refining and Related Industries	
2911	Petroleum refining[2]	1000
2952	Asphalt felts and coatings	750
	Major Group 30—Rubber and Miscellaneous Plastics Products	
3011	Tires and inner tubes	1000
3021	Rubber footwear	1000
3031	Reclaimed rubber	750
	Major Group 32—Stone, Clay, and Glass Products	
3211	Flat glass	1000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	Major Group 33—Primary Metal Industries	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1000
3316	Cold rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3352	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1000
3399	Primary metal industries, not elsewhere classified	750
	Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment	
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750

See footnotes at end of table.

Classification code	Industry	Employment Size Standard (Number of employees)[1]
	Major Group 35—Machinery, Except Electrical	
3511	Steam engines; steam, gas and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1000
3519	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3562	Ball and roller bearings	750
3571	Computing and accounting machines, including cash registers	1000
3572	Typewriters	1000
3585	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750
	Major Group 36—Electrical Machinery, Equipment, and Supplies	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1000
3633	Household laundry equipment	1000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records	750
3661	Telephone and telegraph apparatus	1000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus	750
3671	Radio and television receiving type electron tubes, except cathode ray	1000
3672	Cathode ray picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1000
3694	Electrical equipment for internal combustion engines	750
	Major Group 37—Transportation Equipment	
3717	Motor vehicles and parts[3]	1000
3721	Aircraft[4]	1000
3722	Aircraft engines and engine parts[4]	1000
3723	Aircraft propellers and propeller parts	1000
3729	Aircraft parts and auxiliary equipment, not elsewhere classified[5]	1000
3731	Ship building and repairing	1000
3741	Locomotives and parts	1000
3742	Railroad and street cars	750

Classification code	Industry	Employment Size Standard (Number of employees)[1]
	Major Group 39—Miscellaneous Manufacturing Industries	
3982	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each cal endar quarter for the preceding four quarters.

[2] Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

[3] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

[4] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations:

" 'Maintenance' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance."

" 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[5] Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

§ 18–1.702 General policies.

(a) It is the policy of NASA to place a fair proportion of its total purchases and contracts for supplies and services with small business concerns, and to afford small business concerns an equitable opportunity to compete for contract awards. In the area of research and development contracts, it is NASA policy to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the national interest that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

(b) Each NASA installation having procurement authority shall implement this policy by:

(1) Maintaining bidders lists on a current basis and reviewing them to ensure that all small business firms who have made acceptable application to NASA or who appear from other information (including recommendation by the SBA) to be qualified are included therein;

(2) Acquiring descriptive data, brochures, or other information concerning small business firms who appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel;

(3) To the extent feasible—

(i) Dividing procurements of supplies and services into reasonably small lots of not less than economic production runs in order to permit bidding on quantities less than the total requirements;

(ii) Allowing the maximum amount of time practicable for preparation and submission of bids and proposals; and

(iii) Establishing delivery schedules suitable for small business participation.

(4) Providing to authorized SBA representatives, upon request, information necessary to understand NASA needs concerning research and development programs under consideration for specific future procurement actions. The SBA may provide pertinent information concerning potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by the programs. Full evaluation shall be given to any such information in selecting qualified sources;

(5) Disseminating widely information relating to NASA purchasing methods and practices; and

(6) Freely interchanging ideas and information, including statistical data, with appropriate SBA levels, relating to programs for limiting suitable procurements to small business concerns; and making maximum use of the capacity of small firms in such programs in order to accomplish the purpose of this policy. As to subcontracting, see § 18–1.707.

(c) Records of the total value of all contracts placed with small business concerns during each fiscal year, and reports based thereon, are maintained by NASA through its agencywide procurement reporting system described in

Subpart 18–16.9 of this chapter. Accordingly, each NASA procurement office shall, when soliciting bids or proposals, state the applicable small business size standard (or standards in the case where more than one item is being procured and two or more industries with different size standards are involved) and request from any bidder or offeror, a statement as to whether such bidder or offeror meets the prescribed size standard(s).

§ 18–1.703 Determination of status as small business concern.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall accept at face value, for the particular procurement involved, a statement by the bidder or offeror that he is a small business concern (see §§ 18–1.701–1 and 1.701–4).

(b) Statements by a bidder or offeror that he is a small business concern shall be effective, even though questioned in accordance with the terms of this paragraph (b), unless the SBA, in response to such question and pursuant to the procedures in subparagraph (3) of this paragraph, determines that the bidder or offeror in question is not a small business concern. The controlling point in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of award, except that no bidder or offeror shall be eligible for award as a small business concern unless he has in good faith represented himself as small business prior to the opening of bids or closing date for submission of offers (see § 18–2.405 of this chapter with respect to minor informalities and irregularities in bids).

(1) Any responsive bidder or offeror may, prior to award, question the small business status of the apparently successful bidder or offeror by sending a written protest to the contracting officer. The contracting officer shall forward the protest to the SBA Regional Office for the region in which the questioned bidder or offeror has his principal place of business. SBA will promptly notify the contracting officer of the date of its receipt of any such protest and will advise the questioned bidder or offeror that his small business status is under review.

(2) A contracting officer may, prior to award, question the small business status of the apparently successful bidder or offeror by sending a written notice to the SBA Regional Office for the region in which the bidder or offeror has his principal place of business. Such notice shall contain a statement of the basis for questioning and of available supporting facts. The SBA will promptly notify the contracting officer of the date such notice was received and will advise the bidder or offeror in question that his small business status is under review.

(3) The SBA will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of its decision. If the SBA determination is not received by the contracting officer within 10 workdays after the SBA's receipt of the protest or notice questioning small business status, it shall be presumed that the questioned bidder or offeror is a small business concern. This presumption will not be used as a basis for making an award to the questioned bidder or offeror without first ascertaining when a size determination can be expected from the SBA, and, where practicable, waiting for such determination, unless further delay in award would be disadvantageous to the Government. Pending SBA determination or expiration of the 10-day period, whichever is earlier, procurement action shall be suspended: *Provided*, That such 10-day suspension period shall not apply to any urgent procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be awarded without delay and as to which he inserts in the contract file a statement signed by him justifying this determination.

(4) Any prospective bidder or offeror may, prior to the opening of bids or closing date for submission of offers, question the validity of the small business size standard established for the proposed procurement by sending a written protest to the contracting officer and to the SBA Regional Office servicing the area in which the procurement office is located. SBA will promptly notify the contracting officer of the date of its receipt of any such protest. SBA will determine the current small business size standard applicable to the procurement and notify the contracting officer and the bidder or offeror of its decision. If the SBA determination is not received by the contracting officer within 5 workdays after SBA's receipt of the protest questioning the validity of the small business size standard, it shall be presumed that the contracting officer's initial determination was correct. In the event that the SBA small business size determination differs from that originally made by the contracting officer, the bid (proposal) shall be appropriately amended to reflect such determination. When the SBA determination also results in a higher small business size standard, such action shall be publicized and the opening of bids and closing date for submission of offers extended to permit competition from additional eligible small business sources. Pending SBA determination or expiration of the 5-day period, whichever is earlier, procurement action shall be suspended provided that such 5-day suspension period shall not apply to any urgent procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be awarded without delay and as to which he inserts in the contract file a statement signed by him justifying this determination.

§ 18–1.704 Small business officials.

§ 18–1.704–1 NASA Headquarters.

The Director of Procurement is responsible for the general supervision and coordination of the NASA Small Business Program. Within the Office of Procurement the Small Business Advisor is responsible for developing the NASA small business program, advising the Director of Procurement and other NASA officials on small business problems, and representing NASA before other Government agencies on matters primarily affecting small business.

§ 18–1.704–2 Field installations.

The Director of each field installation having procurement responsibilities shall designate a qualified individual in the procurement office as a "Small Business Specialist" to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program and small business matters. The small business specialist shall also perform such other functions as he is specifically directed to perform by this Subpart 18–1.7 or which the Procurement Officer may prescribe for the purpose of implementing the small business program. When the Director of a field installation considers that the volume of procurement or the functions relating to procurement at the installation does not warrant a full-time small business specialist, he may assign such duties to procurement personnel on a part-time basis.

§ 18–1.705 Cooperation with the Small Business Administration.

§ 18–1.705–1 General.

All NASA procurement offices are responsible for consulting and cooperating with the SBA in carrying out the purposes of the Small Business Act.

§ 18–1.705–2 Small Business Administration representatives.

The SBA may assign one or more representatives on a full or part-time basis to any NASA procurement office to act in its behalf in carrying out SBA responsibilities under the Small Business Act, as amended.

§ 18–1.705–3 Screening of procurements.

(a) *Individual set-asides.* The SBA representatives (cleared for security where classified procurements are to be screened) shall, upon request, promptly be afforded an opportunity at the procurement office to review all proposed procurements for the purpose of recommending set-asides if it is anticipated that the resulting contract or contracts will exceed $2,500 unless, in the case of procurements which are not expected to exceed $10,000, the procurement officer determines that such review would unduly delay the procurement process. A copy of the determination and the justification therefor shall be furnished to the SBA representative. Where it is anticipated that the resulting contract or contracts will exceed $2,500, such SBA representative shall, upon request, promptly be afforded an opportunity to make recommendations concerning proposed procurements, including that they be exclusively or partially set aside for small business concerns. The contracting officer shall afford the SBA repre-

sentative an opportunity to recommend, within a reasonable time, appropriate names of small business concerns for inclusion in lists of bidders for firms to be solicited in connection with current and future procurements.

(b) *Class set-asides.* (1) The SBA representatives shall be afforded an opportunity to make recommendations that current and future procurements, or portions thereof, of selected items or services, or groups of like items or services, shall be set aside as provided in § 18–1.706, for exclusive small business participation. Such set-asides, when approved by the contracting officer, shall be known as class set-asides. Concurrence in a class set-aside shall not be dependent upon the existence of a current procurement if future procurements can be clearly foreseen.

(2) The SBA representatives, upon request, shall be furnished such available or reasonably obtainable information as may be required for the SBA to determine whether or not to recommend a class set-aside.

(c) When no SBA representative is available to screen proposed procurements, the small business specialist is responsible for making appropriate recommendations to the contracting officer that procurements be set aside for small business concerns.

§ 18–1.705–4 Access to procurement information.

Upon request, and subject to applicable security regulations, SBA representatives will be given access to available or reasonably obtainable information, including technical data (including drawings and specifications), procurement history, bidders lists, and planned requirements immediately upon receipt by the procurement office. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

§ 18–1.705–5 Joint SBA–NASA small business class set-aside for construction, repair and alteration work.

A joint class set-aside for small business is considered to have been made for each proposed procurement for construction, repair and alteration work in an estimated amount ranging from $2,500 to $500,000. Accordingly, the contracting officer shall set aside for small business each such proposed procurement. If, in his judgment, the particular procurement falling within the dollar limits specified in this section is unsuitable for a set-aside for exclusive small business participation, he shall notify the appropriate SBA representative of this decision. Unless SBA appeals the decision, pursuant to the provisions of § 18–1.706–2, the contracting officer shall proceed to process the procurement on an unrestricted basis. Proposed procurements for construction, repair and alteration work in an estimated amount of more than $500,000 shall be processed on a case-by-case basis pursuant to § 18–1.705–3(a).

§ 18–1.705–6 Certificates of competency.

(a) The SBA has statutory authority to certify the competency of any small business concern as to capacity and credit. "Capacity" means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, "know-how," technical equipment, and facilities. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's responsibility as to capacity (see § 18–1.903–1(d)) and credit (see § 18–1.903–1(b)), unless the contracting officer has substantial doubts as to the firm's ability to perform, in which case he shall, prior to award, promptly refer the matter through normal channels to the Director of Procurement, including all supporting facts and an indication of the degree of urgency of the proposed award. In such cases, the SBA may be requested to consider the withdrawal of the certificate and, in any event, the contracting officer will be informed by the Director of Procurement of the final decision.

(b) If a small business concern has submitted an otherwise acceptable bid or proposal but has been found by the contracting officer to be nonresponsible as to capacity or credit and, if the bid or proposal is to be rejected for this reason alone, (1) the contracting officer shall notify the SBA of the circumstances so as to permit it to issue a certificate of compentency, and (2) award shall be withheld pending either SBA action concerning issuance of a certificate of competency or the expiration of 15 workdays after the SBA is so notified, whichever is earlier, subject to the following:

(i) This procedure is not mandatory where the contracting officer certifies in writing that award must be made without delay and promptly advises the SBA representative thereof, and includes in the contract file a statement signed by him which justifies the certificate. A copy of the statement shall be furnished to the SBA representative.

(ii) This procedure does not apply to proposed awards of not more than $2,500.

(iii) This procedure is optional, within the discretion of the contracting officer, as to proposed awards of more than $2,500, but less than $10,000.

(iv) This procedure does not apply where the contracting officer has found a small business concern nonresponsible for a reason other than lack of capacity of credit. Thus, it does not apply where a concern does not satisfy the criteria of responsibility in § 18–1.903–1 (a), (f), (g), and (h). Where the contracting officer determines that a concern does not meet the requirements of § 18–1.903–1(e) as to a satisfactory record of performance, the procedure is mandatory only if the unsatisfactory record of performance was due solely to inadequate capacity or credit. However, if the contracting officer has any doubt as to whether the unsatisfactory record of performance can reasonably be attributed solely to lack of capacity or credit, the matter shall be discussed with the local SBA representative. If the local SBA representative is of the opinion that the unsatisfactory record of performance is attributable solely to a lack of capacity or credit, and the contracting officer disagrees, the contracting officer shall forward the matter to the Director of Procurement for resolution and final decision. The contracting officer will be informed of the final decision by the Director of Procurement.

To assist the SBA in determining the capacity and credit of small business concerns involved in a particular procurement, the procurement office shall make available to the SBA all pertinent technical and financial information with respect to the small business concern involved, including but not limited to copies of the invitation for bids or request for proposals, drawings, specifications, preaward surveys, and abstracts of bids.

(c) In procurements where the highest competence obtainable or the best scientific approach is needed, such as in certain negotiated procurements of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or the best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure in paragraph (b) of this section is applicable.

§ 18–1.705–7 Performance of contract by Small Business Administration.

In accordance with section 8a of the Small Business Act (15 U.S.C. 637(a)), in any case in which the Administrator, SBA, certifies to the Administrator, NASA, that the SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to the SBA upon such terms and conditions, consistent with these regulations, as may be agreed upon between the SBA and the contracting officer.

§ 18–1.706 Set-asides for small business.

§ 18–1.706–1 General.

Subject to any applicable preference for labor surplus area set-asides, any individual procurement or class of procurements or an appropriate part thereof shall be set aside for the exclusive participation of small business concerns when such action is (a) jointly determined by a Small Business Administration representative and the contracting officer upon the initiation of either agency, or (b), if no SBA representative is available, is unilaterally determined by the contracting officer to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or in

the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Insofar as practicable, joint determinations shall be used as a basis for set-asides rather than unilateral determinations; but the impracticability of obtaining a joint determination should not be treated as an obstacle to making a set-aside based on a unilateral determination in an otherwise appropriate case.

§ 18–1.706–2 Review of Small Business Administration set-aside proposals.

(a) (1) Upon the recommendation of a SBA representative that an individual procurement or class of procurements, or portions thereof, be set aside for small business, the contracting officer shall promptly either (i) concur in the recommendation, or (ii) disapprove the recommendation, stating in writing his reasons for disapproval. The SBA representative shall be allowed 2 workdays to appeal any such disapproval to the Director of the field installation involved or his designee for decision. During consideration of such appeal there shall be full and free interchange of all pertinent facts between the SBA representative and the procurement office concerned. Within 1 workday after receipt of a decision of the Director of the field installation or his designee disapproving a recommended set-aside, the SBA representative may request the contracting officer to suspend any procurement action affected by the recommended set-aside pending a further appeal by the Administrator, SBA, to the Administrator, NASA, for determination. The SBA shall be allowed 7 workdays after making any such request within which (*a*) the Administrator of SBA may appeal the decision of the Director of the field installation or his designee to the Administrator, NASA, and (*b*) to notify the contracting officer whether such an appeal has in fact been taken. If such notification is not received by the contracting officer within the 7-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the Administrator, NASA, was taken. When an appeal to the Administrator, NASA, has been taken and the contracting officer has been notified of that fact within the 7-day period, the Director of the field installation shall forward to the Administrator, NASA, via the Director of Procurement, a full justification of his decision.

(2) Any procurement action affected by a set-aside recommendation which has been disapproved by the contracting officer and appealed by the SBA representative shall be suspended pending the decision of the Director of the field installation or his designee. If the decision sustains the disapproval and if the SBA representative requests further suspension in accordance with subparagraph (1) of this paragraph, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in subparagraph (1) of this paragraph) or (ii) the matter is determined by the Administrator, NASA: *Provided*, That such suspension shall not apply to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him setting forth the facts and circumstances justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the proviso of the preceding sentence by supplying him with a copy of the justification.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item in question has been placed with small business concerns;

(2) The item to be purchased is on a Qualified Products List except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List (unless it has been confirmed that none of such large businesses desire to participate in the procurement);

(3) A period of less than 30 days from the date of issuance of the invitation for bids or request for proposals is prescribed for the submission of bids or proposals;

(4) The procurement is classified;

(5) Small business concerns are receiving a fair proportion of the total contracts for supplies or services;

(6) A class set-aside of the item or service concerned has been made at some other NASA field installation; or

(7) The item will be described by "brand name or equal."

(c) In approving a proposed class set-aside, the contracting officer shall make sure that the set-aside determination (1) specifically identifies the items or services subject thereto, (2) provides that it will, at least once each year, be reviewed jointly by a SBA representative and the contracting officer to determine whether it should be withdrawn (see § 18–1.706–3 for withdrawal procedure), (3) provides that it does not apply to any individual procurement for which small purchase procedures are to be used, and (4) provides that such class set-aside applies only to the installation making or participating in the set-aside determination. Any class of procurements proposed to be totally set aside shall satisfy the requirements of § 18–1.706–5(a). With respect to any class of procurements proposed to be partially set aside, the set-aside determination shall specify that it is not applicable to any individual procurement which is not severable into two or more economic production runs or reasonable lots.

§ 18–1.706–3 Withdrawal or modification of set-asides.

(a) Each individual procurement governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications for the items or services, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside, are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability.

(b) (1) If, prior to the award of a contract involving an individual or class set-aside for small business, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer may withdraw a unilateral set-aside determination or initiate the withdrawal of a joint set-aside determination by giving to the SBA representative written notice containing the reasons for withdrawing a joint determination. Similarly, a class set-aside may be modified so as to withdraw one or more individual procurements therefrom. In the case of a joint set-aside determination, if the SBA representative does not agree to a withdrawal or modification, the SBA representative shall be allowed 2 workdays to appeal the matter to the Director of the field installation involved or his designee for decision. Within one workday after receipt of a decision of the Director of the field installation or his designee approving such a withdrawal or modification, the SBA representative may request the contracting officer to suspend any procurement actions which would be affected by the withdrawal or modification pending a further appeal by the Administrator, SBA, to the Administrator, NASA, for determination. The SBA shall be allowed 7 workdays after making any such request within which (i) the Administrator, SBA, may appeal the decision of the Director of the field installation or his designee to the Administrator, NASA, and (ii) to notify the contracting officer whether such an appeal has in fact been taken. If such notification is not received by the contracting officer within the 7-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the Administrator, NASA, was taken. Where an appeal to the Administrator, NASA, has been taken and the contracting officer has been notified of that fact within the 7-day period, the Director of the field installation shall forward to the Administrator, NASA, via the Director of Procurement, a full justification of his decision.

(2) Any procurement action affected by a proposed withdrawal or modification which has been appealed by the SBA representative shall be suspended pending the decision of the Director of the field installation or his designee. If the decision sustains the withdrawal or modification, and if the SBA representative requests further suspension in accordance with subparagraph (1) of this paragraph, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in

subparagraph (1) of this paragraph, or (ii) the matter is determined by the Administrator, NASA: *Provided*, That such suspension shall not apply to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the proviso of the preceding sentence.

(3) A record of any withdrawal or modification shall be made by the contracting officer and retained in the contract file.

§ 18–1.706–4 Reporting for Department of Commerce procurement synopsis.

See § 18–1.1003–4.

§ 18–1.706–5 Total set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides the entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 18–1.706–1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, see § 18–1.706–6 as to partial set-asides. While the past procurement history of the item or similar items is important, it is not the only controlling factor which should be considered in determining whether a reasonable expectation exists.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used whenever possible. Invitations for bids shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 18–2 of this chapter, except that bids and awards shall be restricted to small business concerns. Bids received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(c) In procurements involving total set-asides for small business, each invitation for bids or request for proposals shall contain substantially the following Notice:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (SEPTEMBER 1963)

(a) *Restriction.* Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) *Definition.* A "small business concern" is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and, with its affiliates, has not more than (____*) employees, except that where a concern is a regular dealer or nonmanufacturer, such concern must have not more than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

Where the definition of a small business concern for a given industry, as prescribed by SBA and promulgated by NASA, differs from that set forth in the above Notice, the Notice shall be appropriately modified to reflect such definition.

§ 18–1.706–6 Partial set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides, a portion of a procurement (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 18–1.706–1) where:

(1) The procurement is not appropriate for total set-aside pursuant to § 18–1.706–5;

(2) The procurement is severable into two or more economic production runs or reasonable lots; and

(3) One or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

Similarly, a class of procurements (including but not limited to contracts for maintenance, repair, and construction) may be partially set aside in accordance with § 18–1.706–2(c).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) In advertised procurements involving partial set-asides for small business, invitations for bids shall contain substantially the following Notice:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (SEPTEMBER 1963)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also persistent labor surplus area concerns.

Group 2. Small business concerns which are also substantial labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders elegible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(b) *Definitions.*

(1) A *"small business concern"* is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and, with its affiliates, has not more than (____*) employees, except that where a concern is a regular dealer or nonmanufacturer, such concern must have not more than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(2) A *"labor surplus area"* is a geographical area which is:

(i) classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and listed as such by that Department in conjunction with its publication, "Area Labor Market Trends"; or

(ii) not classified as in (i) above, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

*The appropriate number of employees (500, 750, or 1,000) shall be inserted in accordance with §§ 18–1.701–1 and 18–1.701–4.

*The number of employees (500, 750, or 1,000) shall be inserted in accordance with §§ 18–1.701–1 and 18–1.701–4.

(3) *Labor surplus area concern* includes:

(i) persistent labor surplus area concerns which agree to perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus" (also called "Areas of Substantial and Persistent Unemployment"); and

(ii) substantial labor surplus area concerns which agree to perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

A concern shall be deemed to perform a contract substantially in "Areas of Substantial and Persistent Labor Surplus" (also called "Areas of Substantial and Persistent Unemployment") if the costs that it incurs on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas amount to more than 50 percent of the contract price. A concern shall be deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas or in "Areas of Substantial or Persistent Labor Surplus" (also called "Areas of Substantial and Persistent Unemployment") amount—to more than 50 percent of the contract price.

(c) *Identification of areas of performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that, if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus area; and that if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

Where the definition of a small business concern for a given industry, as prescribed by SBA and promulgated by NASA, differs from that set forth in the above Notice, the Notice shall be appropriately modified to reflect such definition.

(d) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the Notice set forth below may be used instead of that in paragraph (c) of this section.

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (SEPTEMBER 1963)

(a) *General.* This procurement has been divided into two parts. All concerns, whether small business or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside" portion. The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation by small business concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. This apportionment is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full production capacity, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. "Small business concern" is defined in paragraph (d) of this Notice.

(b) *Non-set-aside portion and award procedure.*

(1) A bidder which is not a small business concern shall submit a bid only for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a small business concern and is interested in receiving an award for a quantity of an Item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a bid in the same maner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an Item in addition to the quantity set forth in the non-set-aside portion, he must bid the entire quantity of the non-set-aside portion of the Item, and indicate such additional quantity of the Item as he desires by so specifying on the Bidder's Statement of Set-Aside Quantity Desired. Thus, the Bidder's Statement of Set-Aside Quantity Desired is not to be used unless the bidder has bid the entire quantity of an Item under the non-set-aside portion. However, a small business concern which receives no award, or receives an award for less than the total quantity of an Item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-aside portion and award procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below.

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an Item, the small business concern must have submitted a responsive bid on such Item in accordance with the requirements of (b)(2) above at a unit price no greater than 120 percent of the highest unit price for such Item awarded under the non-set-aside portion. However, see (5) below when separate quantities are offered at different prices, (6) below when separate quantities are offered at tie-in prices, and (7) below when all-or-none bids are offered for more than one Item.

(2) *Priorities.* Negotiations for the set-aside portion will be conducted with eligible concerns in the following order of priority:

Group 1. Small business concerns which are also persistent labor surplus area concerns.

Group 2. Small business concerns which are also substantial labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiation for each Item will be conducted with eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. However, see (5) below for the method of determining the bid when separate quantities are offered at different prices, (6) below when separate quantities are offered at tie-in prices, and (7) below when all-or-none bids are offered for more than one Item.

(3) *Quantity.* The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(i) Where a concern has not specified a quantity of the Item on the Bidder's Statement of Set-Aside Quantity Desired, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that Item, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(ii) Where a concern has specified a quantity of the Item on the Bidder's Statement of Set-Aside Quantity Desired, the quantity shall be no greater than the total of the entire non-set-aside portion of the Item and the quantity thereof specified on the Bidder's Statement of Set-Aside Quantity Desired, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, see (6) and (7) below for the highest unit price when the highest award is made as a result of tie-in bids or all-or-none type of qualification.

(5) *Separate quantities at different prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the Item, each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120-percent limit prescribed in (c)(1) above, and for the purpose of determining under (c)(2) above the standing of that bid in the order of negotiations for the set-aside portion of that Item.

(6) *Separate quantities at tie-in prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c)(1) above, (ii) the priority status of the firm under (c)(2) above, and (iii) the highest unit price for awards under (c)(4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(7) *All-or-none bids.* Where a concern has submitted an "all-or-none" bid for more than one Item and thereby has conditioned the Government's right to award any item upon its concurrent award of another Item, the unit price for each Item on an "all-or-none" basis shall be considered independent

these prices for the purpose of determining the eligibility and priority status of the concern for the set-aside portion of each Item. In no event will a set-aside award be made for an Item to such bidder at a higher unit price than his "all-or-none" unit price for the Item on the non-set-aside portion.

(d) *Definitions.*

(1) A "small business concern" is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and, with its affiliates, has not more than (----*) employees, except that where a concern is a regular dealer or nonmanufacturer, such concern must have not more than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(2) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "Persistent Labor Surplus Area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial Labor Surplus Area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(3) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(e) *Identification of areas of performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided*, That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(f) *Agreement.* The bidder agrees that, if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

(g) *Token bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(h) *Instruction for indicating portion of set-aside quantity desired.* The quantity of each item which has been set aside is set forth on the attached Bidder's Statement of Set-Aside Quantity Desired, which is to be filled in only by small business concerns, as provided in (b)(2) above. Furthermore, it is to be used by such a bidder only when (1) he has submitted a bid for the entire non-set-aside quantity of an Item, and (2) he desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with (c) above. It should be noted, however, that to be eligible for the set-aside portion the bidder need not have filled in the Bidder's Statement of Set-Aside Quantity Desired. The latter should only be filled in where the bidder desires a quantity in excess of the non-set-aside quantity.

BIDDER'S STATEMENT OF SET-ASIDE QUANTITY DESIRED

1 Item No.	2 Quantity set-aside	3 Portion of set-aside quantity desired

[The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such item. The portion of set-aside quantity desired column will be left blank for the bidder or offeror to fill in. Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated within the Department of Defense, differs from that set forth in the Notice above, the Notice shall be appropriately modified to reflect such definition.]

(e)(1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices: *Provided*, That, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 18–2.407–6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion.

(2) When the award price for the non-set-aside portion has been determined and where an award will be made to a small business concern and the same small business concern is entitled to receive the set-aside portion of a solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 18–1.706–7 Automatic dissolution of set-asides.

If the entire set-aside portion is not procured by the method set forth in § 18–1.706–5, as to total set-asides, or in § 18–1.706–6, as to partial set-asides, the determination referred to in § 18–1.706–1 is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations. (See § 18–3.201–2(c) of this chapter as to negotiation.)

§ 18–1.706–8 Contract authority.

Contracts for total or partial set-asides entered into by conventional negotiation (see §§ 18–1.706–5(b) and 18–1.706–6(d)) or by "Small Business Restricted Advertising" (see § 18–1.706–5(b)) are negotiated procurements and shall cite as authority 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination, or 10 U.S.C. 2304(a)(1) in the case of a unilateral determination. (See § 18–3.201–2(b) of this chapter.)

§ 18–1.706–9 Maintenance of records.

Records pertaining to the initiation of individual procurements under each class set-aside shall be maintained by small business specialists at each procurement office. Such records shall include:

(a) Invitation for bids or request for proposals number and date;

(b) Item or service;

(c) Unilateral or joint class set-aside and number;

*The appropriate number of employees (500, 750, or 1,000) shall be inserted in accordance with §§ 18–1.701–1 and 18–1.701–4.

(d) Estimated amount of procurement; and

(e) Estimated amount of set-aside.

A copy of each such record shall be made available by each procurement office to SBA upon request.

§ 18–1.707 Subcontracting with small business concerns.

§ 18–1.707–1 General.

(a) It is the policy of the Government to enable small business concerns to be considered fairly as subcontractors to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, and to ensure that prime contractors and subcontractors having small business subcontracting programs will consult through the procurement office with the SBA upon its request.

(b) The SBA is not authorized, however, to prescribe the extent to which any contractor or subcontractor shall subcontract or specify the concerns to which subcontracts shall be granted, nor is authority vested in the SBA respecting the administration of individual prime contracts or subcontracts.

§ 18–1.707–2 Small business subcontracting program.

The Government's small business subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with small business concerns. In contracts which range from $5,000 to $500,000, the contractor undertakes the obligation of accomplishing the maximum amount of small business subcontracting which is consistent with the efficient performance of the contract. This undertaking is set forth in the contract clause prescribed in § 18–1.707–3 (a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause set forth in § 18–1.707–3(b), to undertake a number of specific responsibilities designed to ensure that small business concerns are considered fairly in the subcontracting role and to impose similar responsibilities on major subcontractors. (The liaison officer required by the latter clause also may serve as liaison officer for labor surplus area matters.)

§ 18–1.707–3 Required clauses.

(a) The "Utilization of Small Business Concerns" clause set forth below shall be included in all contracts in amounts which may exceed $5,000 except:

(1) Contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico; and

(2) Contracts for services which are personal in nature.

UTILIZATION OF SMALL BUSINESS CONCERNS (JULY 1962)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

(b) The "Small Business Subcontracting Program" clause set forth in this paragraph shall be included in all contracts which may exceed $500,000, which contain the clause required by paragraph (a) of this section and which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000 but which, in the opinion of the contracting officer, offer substantial subcontracting possibilities, shall be urged to accept the clause.

SMALL BUSINESS SUBCONTRACTING PROGRAM (SEPTEMBER 1963)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."

(2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.

(3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern (ii) procedures which have been adopted to comply with the policies set forth in this clause and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding $10,000 information substantially as follows:

(A) Whether the award went to large or small business.

(B) Whether less than three or more than two small business concerns were solicited.

(C) The reason for non-solicitation of small business if such was the case.

(D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the individual Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review.

(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of $10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for non-solicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give the Small Business Administration timely notice to permit the SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment delay performance under the contract.

(6) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities.

(7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

(8) Submit NASA Form 524 reports each month, in triplicate, to the Office of Procurement, NASA Headquarters, Washington, D.C., 20546, in accordance with the instructions contained therein. The reporting requirements of this subparagraph (8) do not apply to small business contractors or subcontractors.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1.701 of the NASA Procurement Regulation.

(c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.

(d) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of $500,000 and which contains the "Utilization of Small Business Concerns" clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors; except that the subcontractor will submit the NASA Form 524 reports, in triplicate, to NASA Headquarters, Washington, D.C., 20546, in accordance with the instructions contained therein.

§ 18–1.707–4 Responsibility for reviewing the subcontracting program.

To achieve compliance with § 18–1.707–3, the Small Business Advisor, NASA Headquarters, will assign responsibility for reviewing the adequacy of the contractor's small business subcontracting program to a Small Business Specialist at one of the NASA field installations, except that where the preponderance of Government contracts in a contractor's plant is with the Military Departments, the Small Business Advisor, NASA Headquarters, may arrange to utilize the reviews conducted by the cognizant Military Departments (as determined under 32 CFR 1.700–4). In those cases where NASA conducts the review, reports of findings shall be forwarded to the Small Business Advisor, NASA Headquarters, and any deficiencies in the contractor's small business subcontracting program will be brought to the attention of the contractor's designated small business liaison officer with a request for corrective action.

§ 18–1.707–5 Reports on NASA Form 524.

In accordance with § 18–1.707–3, all business concerns which participate in the Small Business Subcontracting Program shall provide monthly the prescribed information on NASA Form 524, to be submitted in duplicate, in accordance with the instructions provided on the form. The reports shall be submitted directly to the Office of Procurement, NASA Headquarters, Washington, D.C., 20546. Copies of the reports will be furnished to the small business specialists at the appropriate NASA field installations.

§ 18–1.707–6 Subcontracting studies and surveys.

Each procurement office shall assist the SBA to obtain such reasonably obtainable information and records concerning the subcontracting of its prime contractors and its subcontractors having contracts that contain the Small Business Subcontracting Program clause, as the SBA may deem necessary. Accordingly, the contracting officer or his representative, separately, or together with a representative of the SBA, may periodically conduct studies and surveys of the contractor's subcontracting procedures and practices and those of his subcontractors. Such studies and surveys may originate with the procurement office in order to have available the pertinent data concerning subcontracting by its primes, or, if such data is not currently available, the studies and surveys may originate upon the request of the SBA for such data. On the basis of the foregoing studies, surveys, and records, the SBA may make recommendations to the procurement office regarding methods for increasing small business participation in subcontract awards. The SBA and the procurement office will freely interchange, at the operating level, information resulting from these surveys.

§ 18–1.707–7 Small Business Administration review of agency records.

To the extent that subcontracting records are maintained in procurement offices, such records shall be made available to the Small Business Administration, upon request, for review.

Subpart 18–1.8—Labor Surplus Area Concerns

§ 18–1.850 Screening of procurements with respect to labor surplus area concerns.

(a) *Forwarding of information.* Procurement offices shall forward to the Office of Procurement, Industry Assistance Officer (Code KD–2), the following information with respect to all proposed unclassified procurements in excess of $250,000, including sole-source procurements, at the earliest possible date, and, in any event, not less than 10 days prior to issuance of the invitation for bids or request for proposals:

(1) A detailed description of the item or work and the quantity involved (a copy of the purchase request may be forwarded in lieu of the detailed description);

(2) Estimated value of the procurement;

(3) Names and locations of firms to be solicited;

(4) Estimated date of issuance of invitation for bids or request for proposals;

(5) Whether a small business or labor surplus set-aside will be made; and

(6) Any special requirements or unusual aspects to be included in the solicitation, e.g., those which will require special capabilities or facilities for development, manufacture, or test purposes.

(b) *Action of Office of Procurement.* The Industry Assistance Officer shall:

(1) Review such proposed procurements to determine if adequate consideration has been given to qualified firms in labor surplus areas;

(2) Suggest additions of qualified firms, when considered feasible, to the proposed source list of firms in labor surplus areas; and

(3) Serve as a central point of contact for representatives of the Area Redevelopment Administration, the Small Business Administration, and for special State representatives on proposed NASA procurements, and afford such representatives opportunities to suggest additions of qualified firms to the proposed source list.

The Industry Assistance Officer shall promptly inform the procurement office concerned of any suggested additional sources, for appropriate consideration.

Subpart 18–1.9—Responsible Prospective Contractors

§ 18–1.900 Scope of subpart.

This Subpart sets forth:

(a) General policy with respect to responsibility of prospective contractors;

(b) Minimum standards for responsible prospective contractors;

(c) Procedures for determining responsibility of prospective contractors;

(d) Policy and procedures with respect to pre-award surveys; and

(e) Policy concerning subcontractor responsibility.

§ 18–1.901 Applicability.

This Subpart applies to procurements from contractors located in the United States, its possessions, and the Commonwealth of Puerto Rico; and will be applied in other places except where it is inconsistent with the laws and customs of the place where the prospective contractor is located. It is not applicable to procurements from:

(a) Other governments, including State and local governments;

(b) Canadian Commercial Corporation;

(c) Other United States Government agencies or their instrumentalities (such as Federal Prison Industries, Inc.); or

(d) National Industries for the Blind.

§ 18–1.902 General policy.

Contracts shall be awarded only to responsible prospective contractors. A responsible prospective contractor is one who meets the minimum standards set forth in § 18–1.903, and such additional standards as may be prescribed for specific procurements.

§ 18–1.903 Minimum standards for responsible prospective contractors.

§ 18–1.903–1 General standards.

A prospective contractor must meet the following minimum standards as they relate to the particular procurement under consideration:

(a) Be a manufacturer, regular dealer, construction contractor, or service contractor, as defined in §§ 18–1.218, 18–1.228, 18–1.204, and 18–1.229 respectively;

(b) Have adequate financial resources or the ability to obtain such resources as required during performance of the contract (see §§ 18–1.903–3 and 18–1.905–2, and for Small Business Administration (SBA) certificates of competency, see § 18–1.705–6);

(c) Have the necessary experience, organization, operational controls, technical qualifications, skills, and facilities, or the ability to obtain them, including the ability to subcontract effectively;

(d) Be able to comply with the required or proposed delivery or performance schedule (for SBA certificates of competency, see § 18–1.705–6);

(e) Have a satisfactory record of performance (contractors who are seriously delinquent in current contract performance, when the number of contracts and the extent of delinquencies of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to fulfill this requirement);

(f) Have a satisfactory record of integrity;

(g) Display a willingness to conform to the Equal Opportunity clause, or, if applicable, the Equal Opportunity in Federally Assisted Construction Contracts clause (see § 18–12.802 of this chapter); and

(h) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

§ 18–1.903–3 Ability to meet certain minimum standards.

Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see § 18–1.906), acceptable evidence of his ability to obtain financial resources, experience, organization, technical qualifications, skills and facilities (see § 18–1.903–1 (b) and (c)) generally shall be a commitment or explicit arrangement which will be in existence at the time the contract is to be awarded.

§ 18–1.903–4 Affiliated concerns.

Affiliated concerns (see § 18–1.701–1 (c)) shall be considered as separate entities in determining whether the one which is to perform the contract meets the applicable standards for a responsible prospective contractor.

§ 18–1.904 Determinations of responsibility and nonresponsibility.

(a) Prior to the award of a contract to any person or firm, the contracting officer shall first determine that such person or firm is responsible within the meaning of §§ 18–1.902 and 18–1.903. The signing of the contract shall be considered to be a certification by the contracting officer that he has determined that the prospective contractor is responsible with respect to that contract.

(b) When the contract is estimated to exceed $10,000 and the contracting officer considers that a statement of responsibility is advisable, the contracting officer shall prepare a written statement of the facts upon which he bases his determination of responsibility. Relevant factors for consideration in determining whether such a statement is advisable would include the value, importance, or technical aspects of the procurement, or lack of previous experience with the prospective contractor. However, when a pre-award survey is made in connection with a contract that exceeds $10,000, the contracting officer shall prepare a written statement of the facts upon which he bases his determination of responsibility. When the contracting officer prepares a statement, any supporting documents or records, including pre-award surveys, SBA certificates of competency, and other information to support determinations of the responsibility of subcontractors will be attached to the statement.

(c) When a bid or offer, on which an award would otherwise be made, is rejected because the prospective contractor is found to be nonresponsible, a statement of nonresponsibility shall be made.

§ 18–1.905 Procedures for determining responsibility of prospective contractors.

§ 18–1.905–1 General.

(a) Generally, determinations of responsibility and nonresponsibility shall be made only on those prospective contractors who are within the range of consideration for award of the contract.

(b) Before making determinations of responsibility, the contracting officer shall have in his possession, or obtain, information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in § 18–1.903 to the extent that such standards are applicable to a specific procurement.

(c) Maximum practicable use shall be made of current information on file or within the knowledge of personnel within NASA and, when practicable, within other Government agencies. Free interchange with other Government agencies of information pertinent to determinations of responsibility is encouraged. NASA installations shall develop and maintain such pertinent records and experience data as may be useful for the guidance of contracting officers and other personnel concerned. Special attention shall be paid to contractors whose past performance is questionable and new contractors whose reliability is yet unestablished. Upon the request of any NASA contracting officer, information available in such records and data shall be expeditiously furnished.

§ 18–1.905–2 When information will be obtained.

Generally, information regarding the responsibility of a prospective contractor (including, in accordance with § 18–1.905–4, pre-award survey information when considered necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources and performance capability shall be obtained on as current a basis as feasible with relation to the date of contract award.

§ 18–1.905–3 Sources of information.

Information regarding the responsibility of prospective contractors shall be requested from the following sources before considering performance of a pre-award survey:

(a) From the prospective contractor—including representations and other information contained in or attached to bids and proposals; replies to questionnaires; financial data, such as balance sheets, profit and loss statements, cash forecasts, financial history of the contractor and affiliated concerns; current and past records of research and development and facilities; written statements or commitments concerning financial assistance and subcontracting arrangements; and analyses of operational control procedures. When it is considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, or for other reasons, prospective contractors may be required to submit affidavits concerning their ability to meet any of the minimum standards set forth in § 18–1.903, and concerning company ownership and control.

(b) Existing information within NASA—including records on file and personal knowledge of NASA procurement and other personnel; audit agencies; offices concerned with contract financing; Consolidated List of Debarred, Ineligible, and Suspended Contractors; and experience data maintained by NASA Headquarters and field installations.

(c) Publications — including credit ratings; trade and financial journals; business directories and registers; and Synopses of U.S. Government Proposed Procurements, Sales, and Contract Awards.

(d) Other sources—including suppliers, subcontractors, and customers of the prospective contractor; banks and financial companies; commercial credit agencies; Government departments and agencies; purchasing and trade associations; better business bureaus and chambers of commerce.

§ 18–1.905–4 Pre-award surveys.

(a) *General.* A pre-award survey consists of an inspection of the plants and facilities with which the prospective contractor proposes to perform a contract, including personal interviews with contractor personnel. It is made at the direction of the contracting officer, generally by one or more Government specialists (hereafter referred to collectively as the pre-award survey officer) to provide needed responsibility information.

(b) *Circumstances under which performed.* Generally, pre-award surveys should be requested by the contracting officer only when other sources do not yield sufficient information to enable the contracting officer to make a determination regarding the responsibility of the prospective contractor. Contracting officers shall limit requests for pre-award surveys to the specific items of information required to reach a conclusion as to the responsibility of the prospective contractor. The pre-award survey officer, in turn, normally will inspect only those items requested by the contracting officer. However, the pre-award officer will determine the need for expanding the limits of the survey if he finds conditions, of which the contracting officer may be unaware, which may affect the prospective contractor's ability to perform.

(c) *Coordination.* Pre-award surveys should be conducted by one NASA installation for another or by other Government agencies for NASA, when this will achieve economy, increase efficiency, or eliminate duplication of effort. In this regard, agreements have been entered into by NASA with the Departments of the Army (NASA Management Instruction 2–3–9), Navy (NASA Management Instruction 2–3–6), and the Air Force (NASA Management Instruction 2–3–4), relating to the performance of field service functions, including pre-award surveys, in support of NASA contracts.

§ 18–1.905–50 Factors to be considered.

In conducting a pre-award survey of a firm, the pre-award survey officer shall consider the following factors, in accordance with the criteria stated in § 18–1.905–4:

(a) Organization—form of company (corporation, partnership, etc.); status of company (manufacturer, regular dealer, etc.); affiliates or parent company (business, organization, and relationship); small business status; intra-organizational assignment of functions important to the assurance of contract performance (e.g., reliability and quality assurance, purchasing and materials control, production planning control, project cost control, and research and development);

(b) Management and labor—titles, experience, and citizenship of management force; skill, competence, and adequacy of working force; company's working policy; company's labor relations; company's status as a labor surplus area concern;

(c) Financial capacity—financial stability; credit ratings; additional financing required; advance or progress payments with other Government agencies;

(d) Production—production experience with the same or similar products; extent and adequacy of production control techniques; extent of subcontracting; inspection and quality control procedures;

(e) Facilities—size, number, and types of buildings; apportionment of space; evaluation of laboratory and testing facilities; adequacy and condition of equipment and tooling; extent of required conversion of existing facilities; availability of facilities (owned, leased, Government-furnished, etc.);

(f) Delivery performance—backlog, and delivery performance of current and past contracts; size and effect of commercial and other Government contracts;

(g) Purchasing materials control—adequacy of company's purchasing system; make-or-buy program; inventory control procedures;

(h) Accounting—adequacy of accounting system to permit administration of the type of contract proposed and for control of progress or advance payments;

(i) Nondiscrimination—capability for conformance with the requirements of the Equal Employment Opportunity clause or, if applicable, the Equal Employment Opportunity in Federally Assisted Construction Contracts clause;

(j) Utilities—availability and adequacy of utilities (electricity, gas, water, etc.);

(k) Transportation—availability of transportation; plant accessibility;

(l) Property control—adequacy of property control records and procedures;

(m) Security—adequacy of security measures. If a firm has previous clearance, give cognizant agency, date, and type of approval; and

(n) Safety—adequacy of a safety program designed to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the contract.

§ 18–1.905–51 When surveys normally are not required.

Normally, preaward surveys are not required under the following conditions:

(a) If the data is available from other sources;

(b) If the contract is for study or research only;

(c) When the contract will be a fixed-price contract for off-the-shelf items when the contract amount is less than $100,000;

(d) If the pending contract will be a definitive contract superseding a letter contract;

(e) For orders under existing Government contracts;

(f) If the prospective contractor has proved his reliability by recent and sustained or existing satisfactory performance; and

(g) If the source has been recommended by the NASA Source Evaluation Board Manual (NPC 402) and § 18–3.804–3 of this chapter.

§ 18–1.905–52 Procedures for requesting pre-award surveys.

(a) When the contracting officer determines that a pre-award survey is required, he shall prepare and submit two copies of the Request for Pre-Award Survey (NASA Form 585), with a copy of the invitation for bid or request for proposal, to the pre-award survey officer (see § 18–1.950).

(b) In addition, if a complete survey of financial responsibilities is required, the contracting officer shall prepare three copies of the Financial Data Sheet (NASA Form 586, see § 18–1.951), completing Items 1 through 11 as appropriate, and forward the copies to the pre-award survey officer with NASA Form 585.

(c) Requests for surveys may be submitted to any Military Department with which NASA has a service agreement (see § 18–1.905–4) or to the NASA installation located nearest to the prospective contractor. When pre-award surveys are requested from a Military Department, the survey shall be requested by letter.

§ 18–1.905–53 Procedures for accomplishing pre-award surveys.

(a) Upon receipt of the request for pre-award survey, the pre-award survey officer shall:

(1) Familiarize himself with the terms of the invitation for bid or request for proposal;

(2) Review information available from other sources relative to the contractor;

(3) Physically make a survey of the plant concerned; and

(4) Complete NASA Form 586 when required.

(b) Upon completion of the survey, the pre-award survey officer shall prepare three copies of a narrative report of survey information and conclusions. In preparing the report, the pre-award survey officer should ensure that all the information required by the contracting officer and, in each area of investigation, a definite statement as to responsibility and capability of the contractor have been included. The reports should be brief, clear, and complete, and should not include matters other than those specifically requested by the contracting officer except as indicated in § 18–1.905–4. Two copies of the report and NASA Form 586 (when required) shall be furnished to the contracting officer and one copy of each retained in the local files.

§ 18–1.906 Subcontractor responsibility.

To the extent that a prospective contractor proposes to perform the contract by subcontracting, determination of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. It is generally the prospective contractor's function to make these determinations concerning the responsibility of the prospective subcontractors. Prospective prime contractors may be required to (a) indicate in writing the responsibility of the proposed subcontractors, or (b) show evidence of an acceptable and effective purchasing and subcontracting system encompassing a method for determining subcontractor capability.

§ 18–1.907 Disclosure of pre-award data.

Data, including information obtained from a pre-award survey, leading to a determination of the responsibility of prospective contractors shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations. However, such data may be disclosed to, or summarized for, other elements within the Government on their request. Such information shall be made available to procurement personnel of NASA and other Government agencies upon request in accordance with § 18–1.905–1. In connection with making a determination of responsibility, information disclosed by such data may be discussed with the prospective contractor, as necessary.

§ 18–1.950 Format of request for pre-award survey (NASA Form 585).

[ ] Complete [ ] Limited

1. To: name, installation	2. Date received (to be filled in by Pre-Award Survey Officer):
3. Buyer's name, installation, and telephone No.	
4. Proposed contractor's name and address	5. Sole source [ ] Yes [ ] No
6. [ ] RFP [ ] IFB Number and date	7. Order number
8. Contract type (including type, price redetermination clause, if any)	9. Small business or approved pool, if known:
10. Brief description of the procurement:	
11. Proposed time schedule for delivery of performance:	

12. Expected date for awarding contract	13. Requested date for return of survey report

14. Previous experience with proposed contractor:

15. Items requiring investigation (if only limited survey is required):

16. Remarks:

17. Date:	18. Signature:

NASA Form 585 (September 1961)

§ 18–1.951 Format of financial data sheet (NASA Form 586).

1. Contractor's name and address

2. Echelon of company (parent, division, subsidiary)

3. Originating activity	4. Buyer's name	5. Date of request for Pre-Award Survey, if any:
6. Address orig. activity	7. Buyer's phone No.	8. Order No.

9. Description of procurement:

10. Approximate schedule:

11. Previous experience with contractor:

12. Financing necessary (comments on reverse or separate sheet):
[ ] Own capital [ ] Borrowing [ ] Progress payments [ ] Advance payments

13. Source of information: [ ] Contractor's financial statement dated
[ ] Prior clearance list [ ] Other (specify)

14. Cash	21. Backlog as of
15. Current assets	Commercial
16. Current liabilities	Government
17. Working capital	Delivery schedule
18. Net worth	22. Ratio total debt to net worth
19. Total liabilities	Company
20. Fixed expenses at computed BEP	Dun & Bradstreet

23. Does the firm have the financial capability to perform in accordance with the proposed contract?

24. Date:	25. Signature:

NASA Form 586 (September 1961)

Subpart 18–1.10—Publicizing Procurement Actions

§ 18–1.1001 General policy.

It is NASA policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in NASA procurement programs.

§ 18–1.1002 Availability of invitations for bids and requests for proposals.

A reasonable number of copies of invitations for bids and requests for proposals publicized in the Department of Commerce Synopsis, including specifications and other pertinent information, shall be maintained by the issuing office. If the invitations for bids or requests for proposals reveal no classified information (and, accordingly, bear no classified markings), they shall, if available, be provided at the procurement office to manufacturers, construction contractors, and regular dealers and to others having a legitimate interest therein, such as publishers, trade associations, procurement information services, and others who disseminate information concerning invitations for bids and requests for proposals; otherwise the procurement office may limit the availability of invitations for bids and requests for proposals to perusal at such office.

§ 18–1.1003 Synopses of proposed procurements.

§ 18–1.1003–1 General.

Every proposed advertised or negotiated procurement made in the United States, which may result in an award in excess of $10,000, will be publicized promptly in the Department of Commerce publication, Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards except that the following need not be publicized in the Synopsis:

(a) Procurement of a classified nature where the information necessary to be included or referenced in the solicitation (invitation for bids or request for proposals) is in itself of a classified nature and the public disclosure of this information would violate security requirements; all other classified procurements shall be published in the Synopsis if sufficient unclassified information can be provided in or with the solicitation to enable a prospective contractor to submit a bid or proposal without access to classified information;

(b) Procurement of perishable subsistence;

(c) Procurement of electric power or energy, gas (natural or manufactured), water or other utility services;

(d) Procurement (whether advertised or negotiated) which is of such urgency that the Government would be adversely affected by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than 15 calendar days from the date of transmittal of the synopsis or the date of issuance of the solicitation, whichever is earlier;

(e) Procurement to be made by an order placed under an existing contract;

(f) Procurement to be made from or through another Government department or agency, or a mandatory source of supply such as an agency for the blind under the blind-made products program;

(g) Procurement of personal or professional services to be negotiated under § 18–3.204 of this chapter;

(h) Procurement from educational institutions to be negotiated under § 18–3.205 of this chapter; and

(i) Procurement in which only foreign sources are to be solicited.

§ 18–1.1003–3 Synopses of subcontract opportunities.

(a) *Research and development procurements.* Within the security limitations of § 18–1.1003–1(a), all proposed NASA research and development procurements made in the United States which may result in an award of $100,000 or more, except proposed study contracts or proposed contracts with educational or nonprofit institutions, shall be publicized in the Commerce Business Daily. The information shall be sent by teletype directly to Synopsis, U.S. Department of Commerce, Administrative Service Office, Chicago, Illinois, simultaneously with the mailing of the requests for proposals. The procurement will be publicized by the Department of Commerce under the heading "Research and Development Proposals" (National Aeronautics and Space Administration). In addition to the information normally included in a

synopsis, the names and addresses of all firms which have been invited by NASA to submit proposals shall be furnished to the Department of Commerce. This procedure will offer opportunity to small business concerns and others interested in subcontracting in current research and development procurements to contact prospective prime contractors directly during the early stages of procurement. A copy of each synopsis sent to the Department of Commerce shall be furnished to the Office of Procurement (Code KD–2) and to the Office of Public Information, NASA Headquarters (Attn: News Division).

(b) *Technical proposals received under two-step formal advertising.* Contracting officers shall, unless not in the Government's interest or subcontracting opportunities do not exist, publish in the Commerce Business Daily the names and addresses of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising and will therefore be issued invitations for bids in the second step (see § 18–2.503 of this chapter). Such lists should be followed by a statement substantially as follows:

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(c) *Prime contractors and subcontractors.* Prime contractors and subcontractors should be encouraged to use the Department of Commerce Synopsis to publicize opportunities in the field of subcontracting stemming from their Government business, if this can be done without disclosing classified information. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, Admininstrative Service Office, Room 1300, 433 W. Van Buren St., Chicago 7, Illinois, under the heading "Subcontracting Leads (Subcontracting Assistance Wanted)," and in the form of the following example:

XYZ Co., Attn John Z. Smith, Tel. No. RAndolph 6–1111, 102 First Ave., Chicago 7, Ill., seeks Subcontractor on items to be used in connection with Contract No. ------ awarded ---------- Coils, Induction, Dwg. No. 10–742 -------- 10,000 ea. (Name, description, and quantity of other items or services may be included as long as contract assistance is desired under the same contract number)—if interested, make inquiry before ---------- to above Contractor.
(Date)

§ 18–1.1003–4 Responsibility of small business specialists.

Small business specialists in each procurement office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of § 18–1.1003. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

§ 18–1.1003–5 Publication of procurements of less than $10,000.

When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements of less than $10,000 may be publicized in the Commerce Business Daily.

§ 18–1.1003–6 Pre-invitation notices.

Where pre-invitation notices (see § 18–2.205–4(c)) of this chapter are used, the pre-invitation information shall be included in the synopsis. This information need not be republished in the synopsis when the invitation for bids is issued.

§ 18–1.1003–7 Information regarding specifications, plans, and drawings.

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained (see § 18–1.1003–9 (c) and (d)).

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement, the synopsis will contain notice of this fact (see § 18–1.1003–9 (c) and (d)).

§ 18–1.1003–8 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids, proposals, or quotations, procurement offices should, when feasible, synopsize proposed procurements at least 10 days before issuance of invitations for bids and requests for proposals. Prompt reporting is particularly important where a short time for submitting bids or proposals is involved.

§ 18–1.1003–9 Preparation and transmittal.

(a) Each procurement office shall transmit a synopsis of proposed procurements as follows:

(1) When teletypewriter service is available, all synopses shall be forwarded daily as soon as practical via teletypewriter to the following address: Synopsis, U.S. Department of Commerce, Administrative Service Office, Chicago, Illinois.

(2) When teletypewriter service is not available, synopses normally shall be sent by airmail or ordinary mail, whichever is considered more expenditious, addressed as follows: U.S. Department of Commerce (Synopsis), Administrative Service Office, Room 1300, 433 West Van Buren, Street, Chicago, Ill., 60607. This address should be used also when commercial telegraph facilities are used.

(b) Each synopsis message shall be prepared as described below:

(1) Spacing—Except as provided in § 18–1.1003–9(b)(4), lines of the text will begin flush with the left margin and will not exceed 69 typewritten spaces in length. Double-spaced lines will be used in the text. Each procurement shall be described in a separate paragraph.

(2) Message number—The first line of the message text will state the "transmittal number" of the message being sent. Synopses will be numbered consecutively by the reporting activity during the calendar year, using a new series of numbers beginning with number one for the first message of each calendar year.

(3) Contracting office and address—The name and address of the contracting office will begin on the second line of the message text and continue straight across the page and on the subsequent line or lines if necessary. No abbreviations are to be used except for the name of the State. The address may include an attention phrase directed to an official by name, title, or reference code.

(4) Description of procurements—The appropriate classification code (see §18–1.1005 and subparagraph (5) of this paragraph) for each proposed procurement of supplies and services shall begin 5 spaces from the left margin followed by two hyphens and the description of the procurement. As used in this Subpart the term "supplies" includes materials and equipment. The description shall be in narrative form, double spaced, with each succeeding line commencing flush with the left margin. The description shall be clear, concise, and in such detail that it will be understood by interested parties. Descriptions shall include, as appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, citations of specification and drawing numbers, quantities, units of measure, invitation for bid or request for proposal numbers, opening dates, places of delivery, and other pertinent data. Where a term or indefinite quantity contract is involved, the description should so indicate and, where applicable, include a statement as to the duration of the contract period. If an item is covered by one or more specifications requiring qualification testing and approval, and such requirement has not been waived, the notation "QPL" shall be inserted immediately following the specification number. Federal stock numbers should be included where one has been assigned. Only standard, commonly understood abbreviations may be used. For purposes of clarity, two hyphens should be used instead of punctuation marks to separate quantities, purchase reference numbers, opening dates, and other elements of the description. Copies of the Commerce Business Daily will be helpful as a guide in preparing messages.

(5) Several items on one invitation for bids or request for proposals—Where several items are included in the same invitation for bids or request for proposals, a blanket statement such as "The following described items are to be procured under Invitation for Bids (or Request for Proposals) No. ---------- Opening Date ----------" should be inserted following the classification code and preceding the description of the items. If more than one class of sup-

plies or services is involved, enter the code for the class accounting for the largest dollar volume of the procurement.

(6) Procurements involving set-asides—If the proposed procurement involves a small business set-aside or labor surplus area set-aside, the synopsis message shall:

(i) Where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) totally set aside for small business." Separate messages should be sent covering those proposed procurements which involve 100 percent small business set-asides in order to facilitate proper identification in the synopsis.

(ii) Where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of ---------- is
(Insert number of units and description)
being reserved for ----------
(Insert "small business" or "labor surplus area," as appropriate)
concerns under a partial set-aside determination."

(c) Certain procurements involve demands on the contractor which may make it virtually impossible for concerns not having special capabilities or qualifications to compete realistically for the contract, as for example, when:

(1) It is impracticable to distribute plans, drawings, or specifications;

(2) Adequate plans, drawings, or specifications to describe requirements are not available;

(3) Security clearance is required; or

(4) Other circumstances exist which should be brought to the attention of prospective sources for consideration in order to indicate clearly those qualifying factors affecting the procurement.

(d) To alert concerns to the need for special capabilities or qualifications and thus permit them to avoid improvident expenditures for bid preparation and the like, procurements of the kind described in paragraph (c) of this section should be so identified in the synopsis. Appropriate notations for inclusion in the synopsis, such as set forth below, should be devised to meet the needs of specific situations.

(1) *Availability of specifications, plans, or drawings.* It will be impracticable to distribute the applicable ----------
(Insert "specifications," "plans," "drawings," or other appropriate words) with the solicitation. This data may be examined or obtained at ----------
(Be specific)

(2) *Complete data not available.* Available specifications, plans, or drawings relating to the procurement described below do not fully provide all necessary manufacturing and construction details.

(3) *Security requirements.* Security clearance will be required of successful bidder or offeror.

(4) *Availability of background research report.* This procurement of basic research is a continuation of an effort conducted for the past ----------
(Insert period)
A research report containing findings to date is not available to the Government.

(5) *Production requirements.* The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture.

§ 18–1.1003–10 Area Redevelopment Administration.

To provide wider dissemination of NASA procurement information to labor surplus area concerns, a copy of all synopses of proposed procurements transmitted to Chicago for publication in the Commerce Business Daily will be sent at the same time to the Federal Procurement Division, Area Redevelopment Administration, U.S. Department of Commerce, Washington, D.C.

§ 18–1.1004 Synopses of contract awards.

Awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding $25,000 in amount, shall be publicized in the "Commerce Business Daily Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards." This dollar amount is not a prohibition against publicizing smaller awards where it is determined that such publication would be advantageous to industry or to the Government.

§ 18–1.1004–1 Preparation and transmittal.

(a) Procurement offices shall transmit single copies of synopses of contract awards by airmail or ordinary mail, whichever is considered more expeditious, before the close of business at the end of each week, addressed as follows: U.S. Department of Commerce, Administrative Service Office, Ref. CA, Room 1300, 433 West Van Buren Street, Chicago, Illinois, 60607.

(b) Each synopsis message shall be prepared as described below:

(1) Spacing shall be as stated in § 18–1.1003–9(b)(1).

(2) The contracting office and address will be shown as described in § 18–1.1003–9(b)(3).

(3) The appropriate classification code (see § 18–1.1005) for each contract award shall begin 5 spaces from the left margin and be followed by two hyphens and the common name of the supplies or services. If a contract covers more than one class of supplies or services, enter the code for the class which accounts for the largest dollar amount. Immediately following the common name, using full lines across the page, enter the contract number, the number of the invitation for bids or request for proposals (in parentheses), the quantity, unit, and dollar amount for each item, and the name and address of the contractor. The quantity, unit, and dollar amount for individual items of $25,000 or less in a single award need not be shown. In lieu thereof, a statement, such as "various items" or "20 items" or "items 3, 5, 6, 7, 9, 16, 20, and 23," followed by the total dollar amount of the award for such items, may be used.

(4) When requested by the prime contractor, a statement shall be included regarding the industries, crafts, processes, or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

(c) Procurement offices shall forward, by mail, one copy of the synopsis of contract award, as prepared in paragraph (b) of this section, to the Director of Procurement (Code KD–2).

§ 18–1.1005 Classification codes.

The classification codes to be shown in synopses messages, as required by § 18–1.1003–9(b)(4) for proposed procurements and § 18–1.1004–1(b)(3) for contract awards, shall be in accordance with this § 18–1.1005. Services (including construction and experimental, developmental, test, and research work) shall be coded with the applicable letter code set forth in § 18–1.1005–1. Supplies shall be coded with the applicable two-digit numerical code set forth in § 18–1.1005–2.

§ 18–1.1005–1 Codes for services.

The code letters to be used for services are as follows:

Code	*Description of services*
A.	Experimental, developmental, test, and research work (research includes both basic and applied research).
J.	Maintenance and repair of equipment.
K.	Modification, alteration, and rebuilding of equipment.
L.	Technical representative services (Example: Services of technical specialists required to advise and assist with respect to the installation, checking, operation, and maintenance of complex equipment).
M.	Operation and maintenance of Government-owned facility.
N.	Installation of equipment (use code K if the procurement also involves modification, alteration, or rebuilding of the equipment).
P.	Salvage services (services required to salvage property of any kind).
Q.	Medical services.
R.	Architect, engineer, expert, and consultant services.
S.	Housekeeping services. Examples: Utility services (gas, electric, telephone, etc.). Laundry and dry cleaning services. Custodial—janitorial service. Insect and rodent control. Packing and crating. Storage services. Garbage and trash collection. Food service. Fueling service. Fire protection. Building and grounds maintenance. Care of remains—funeral services. Guard services.
T.	Photographic, mapping, printing, and publication services. Examples: Film processing. Cataloging. Charting. Reproduction. Technical writing. Art. Printing.
U.	Training services.
V.	Transportation services. Examples: Passenger and cargo transportation. Vessel charter. Vessel operation. Tug service. Stevedoring service. Vehicle hire. Railway equipment charter.

Code	Description of Services
W.	Lease or rental, except transportation equipment. Examples: Lease of ADP or EAM equipment. Lease of earth-moving equipment.
Y.	Construction (includes construction, alteration, and repair of buildings, structures, and improvements to real property, including roads, bridges, tunnels, sewers, power lines, railways, docks, levees and canals).
Z.	Miscellaneous (includes services which do not fall within any of the above).

§ 18–1.1005–2 Codes for supplies.

The two-digit code numbers to be used for supplies are as set forth below. The numbers and descriptions used are the same as the 76 assigned commodity groups of the Federal Supply Classification system as shown in the Cataloging Handbook, H 2–1, Federal Supply Classification, Part 1, Groups and Classes. This handbook, together with Cataloging Handbooks H 2–2 (Numeric Index of Classes) and H 2–3 (Alphabetic Index), will be helpful in determining the proper code to be assigned to supply items in synopses messages. These handbooks may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

Code	Description of Supplies
10.	Weapons.
11.	Nuclear ordnance.
12.	Fire control equipment.
13.	Ammunition and explosives.
14.	Guided missiles.
15.	Aircraft; and airframe structural components.
16.	Aircraft components and accessories.
17.	Aircraft launching, landing, and ground handling equipment.
18.	Space vehicles.
19.	Ships, small craft, pontoons, and floating docks.
20.	Ship and marine equipment.
22.	Railway equipment.
23.	Motor vehicles, trailers, and cycles.
24.	Tractors.
25.	Vehicular equipment components.
26.	Tires and tubes.
28.	Engines, turbines, and components.
29.	Engine accessories.
30.	Mechanical power transmission equipment.
31.	Bearings.
32.	Woodworking machinery and equipment.
34.	Metalworking machinery
35.	Service and trade equipment.
36.	Special industry machinery.
37.	Agricultural machinery and equipment.
38.	Construction, mining, excavating, and highway maintenance equipment.
39.	Materials handling equipment.
40.	Rope, cable, chain, and fittings.
41.	Refrigeration and air-conditioning equipment.
42.	Fire-fighting, rescue, and safety equipment.
43.	Pumps and compressors.
44.	Furnace, steam plant, and drying equipment; and nuclear reactors.
45.	Plumbing, heating, and sanitation equipment.
46.	Water purification and sewage treatment equipment.
47.	Pipe, tubing, hose, and fittings.
48.	Valves.
49.	Maintenance and repair shop equipment.
51.	Hand tools.
52.	Measuring tools.
53.	Hardware and abrasives.
54.	Prefabricated structures and scaffolding.
55.	Lumber, millwork, plywood, and veneer.
56.	Construction and building materials.
58.	Communication equipment.
59.	Electrical and electronic equipment components.
61.	Electric wire, and power and distribution equipment.
62.	Lighting fixtures and lamps.
63.	Alarm and signal systems.
65.	Medical, dental, and veterinary equipment and supplies.
66.	Instruments and laboratory equipment.
67.	Photographic equipment.
68.	Chemicals and chemical products.
69.	Training aids and devices.
71.	Furniture.
72.	Household and commercial furnishings and appliances.
73.	Food preparation and serving equipment.
74.	Office machines and data processing equipment.
75.	Office supplies and devices.
76.	Books, maps, and other publications.
77.	Musical instruments, phonographs, and home-type radios.
78.	Recreational and athletic equipment.
79.	Cleaning equipment and supplies.
80.	Brushes, paints, sealers, and adhesives.
81.	Containers, packaging, and packing supplies.
83.	Textiles, leather, and furs.
84.	Clothing and individual equipment.
85.	Toiletries.
87.	Agricultural supplies.
88.	Live animals.
89.	Subsistence.
91.	Fuels, lubricants, oils, and waxes.
93.	Nonmetallic fabricated materials.
94.	Nonmetallic crude materials.
95.	Metal bars, sheets, and shapes.
96.	Ores, minerals, and their primary products.
99.	Miscellaneous.

§ 18–1.1006 Paid advertisements in newspapers and trade journals.

Use of paid advertisements for procurement purposes is not currently authorized within NASA (§ 18–2.203–3 of this chapter).

§ 18–1.1050 Furnishing additional procurement information to public.

(a) In addition to publicizing procurements and contract awards in the Commerce Business Daily, it is NASA policy to furnish the public, upon request, through the public information office of the NASA installation receiving the request, information on specific current NASA procurements, including:

(1) The names of firms invited to submit bids or proposals;

(2) The names of firms which attended pre-proposal briefing conferences when held; and

(3) After the date established for receipt of bids or proposals, the names of firms which submitted bids or proposals.

(b) Exceptions to this policy will be permitted only when the Director of Procurement or the Director of the field installation concerned determines that the disclosure of such information would be prejudicial to the interests of NASA.

Subpart 18–1.12—Specifications, Plans, and Drawings

§ 18–1.1200 Application.

The policies and procedures of 32 CFR Part 12, Subpart A, and of FPR 1–1.305 through 1–1.307, inclusive, are hereby made applicable to NASA, except that:

(a) Military specifications approved by the Department of Defense for its use, as set forth in 32 CFR 1.1202, are not mandatory for use by the National Aeronautics and Space Administration; and

(b) The Defense Standardization Program, established by the Department of Defense, and referenced in 32 CFR 1.1202, is not applicable to the National Aeronautics and Space Administration.

Subpart 18–1.14—Preference for United States-Flag Air and Ocean Carriers

§ 18–1.1400 Scope of subpart.

This Subpart sets forth NASA policy regarding the use of United States-flag services for the transocean movement of cargo for which NASA assumes the transportation costs, either directly (movement on Government bill of lading) or indirectly (FOB destination purchases).

§ 18–1.1402 General.

United States-flag commercial aircraft and ocean vessels shall be used for all NASA transocean shipments when the services offered are timely, adequate, and reasonable. When United States-flag carriers operate between the air or water ports serving the origin and destination, foreign-flag carriers shall not be used without the approval of the cognizant installation Director of Administration or his designated representative. Questionable cases shall be referred to a competent transportation source to ensure that United States-flag carriers cannot meet the shipping requirements. Examples of conditions justifying the use of foreign-flag carriers include:

(a) United States-flag steamship or airline companies cannot meet the realistic deadline delivery date established for the shipment,

(b) the rates charged by United States-flag carriers are disproportionately high by comparison with those of available foreign-flag carriers; and

(c) property has been purchased FOB destination from a foreign contractor.

§ 18–1.1404 Procedures.

When determined by the procurement officer to be necessary to ensure proper implementation of the policy expressed in § 18–1.1402, the following clause shall be included in each contract which may involve overseas shipments.

PREFERENCE FOR UNITED STATES-FLAG AIR AND OCEAN SERVICES (SEPTEMBER 1962)

(a) After the date of this award, the Contractor shall use United States-flag services, and no others, in the overseas transportation by ocean or air if any supplies to be furnished hereunder: *Provided*, however, that if such services are not available for timely shipment at fair and reasonable rates, the

Contractor shall so notify the Contracting Officer and request authorization in writing to ship by foreign-flag air or ocean carriers or for designation of available United States-flag services. The contract price shall be equitably adjusted to reflect the difference in cost to the Contractor, if any, between shipping by United States-flag services and by foreign-flag services.

(b) Copies of the bill of lading covering each shipment by foreign-flag carrier will be forwarded to the Contracting Officer immediately after the property has been shipped.

§ 18–1.1405 Responsibilities.

A copy of the bill of lading covering each shipment by foreign-flag carrier shall be forwarded promptly to the Director, Transportation and Logistics (Code BL), NASA Headquarters, with a brief statement justifying the use of the foreign-flag service. Blanket exceptions to this reporting requirement may be requested from NASA Headquarters for repetitive movements for which a foreign-flag service must be used.

§ 18–1.1410 None-use of foreign-flag vessels engaged in Cuban trade.

(a) Supplies owned by or procured under any contract of NASA will not be shipped from any United States port on a foreign-flag vessel which has called at a Cuban port on or after January 1, 1963, unless the Secretary of Commerce has made an exception applicable to such vessel.

(b) Procurement offices shall include the following clause in any contract which may involve the use of foreign-flag vessels in the ocean transportation from a United States port of supplies to be delivered under the contract or to be incorporated in supplies or other end product of the contract:

NON-USE OF FOREIGN-FLAG VESSELS ENGAGED IN CUBAN TRADE (MAY 1964)

(a) If, after the date of award, any supplies to be furnished or any materials to be incorporated in such supplies or in a construction project will require ocean transportation from the United States in the performance of this contract, the Contractor shall not use any foreign-flag vessel which the Maritime Commission has listed in the FEDERAL REGISTER as having called at a Cuban port on or after 1 January 1963 unless an exception has been made by the Secretary of Commerce.

(b) For purposes of this clause, the term "United States" includes the fifty States, Puerto Rico, possessions of the United States, and the District of Columbia.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in each subcontract or purchase order hereunder which may involve ocean transportation from the United States.

Subpart 18–1.16—Novation Agreements

§ 18–1.1600 Scope of subpart.

This subpart prescribes the policy and procedures for (a) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or the part of his assets involved in the performance of the contracts, (b) a change of name of a contractor, and (c) single installation execution of novation agreements affecting more than one installation.

§ 18–1.1601 Definition.

For the purposes of this subpart, the following definition applies. A novation agreement is a contractual amendment by which the Government recognizes a successor in interest to a Government contract or a change of name of a contractor. The successor in interest assumes all the obligations under the contract and the transferor guarantees the performance of the contract by the transferee. Where only a change of name is made the rights and obligations of the parties remain unaffected.

§ 18–1.1602 Agreement to recognize a successor in interest.

(a) The transfer of a Government contract is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract when the third party's interest is incidental to the transfer of all the assets of the contractor, or all of that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

(1) Sale of such assets;

(2) Transfer of such assets pursuant to merger or consolidation of corporations; and

(3) Incorporation of a proprietorship or partnership.

(b) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the designated installation shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract as against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond from either the transferor or the transferee may be accepted in lieu of such guarantee); and

(4) Nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law.

A format for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth in § 18–1.1651–1. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

(c) Prior to the execution of such agreement, one copy of each of the following, as applicable, shall be deposited by the contractor with the designated installation:

(1) A properly authenticated copy of the instrument by which the transfer of assets was effected, as, for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(2) A list of all contracts which have not been finally settled between NASA and the transferor, showing for each contract the contract number, the name and address of the installation involved, the total dollar value of the contract as amended, the type of contract, and the balance remaining unpaid;

(3) A certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(4) A certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(5) A properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(6) An opinion of counsel for the transferor and transferee that the transfer was properly effected in accordance with applicable law and the effective date of transfer;

(7) Evidence of the capability of the transferee to perform the contracts;

(8) Balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets;

(9) Evidence of security clearance requirements; and

(10) Consent of sureties on all contracts listed under subparagraph (2) of this paragraph on which bonds were required.

§ 1.1603 Agreement to recognize change of name of contractor.

(a) When only a change of name is involved, so that the rights and obligations of the parties remain unaffected, an agreement between the designated installation and the contractor shall be executed effecting the amendment of all existing contracts between the parties so as to reflect the contractor's change of name. A format for such an agreement, which shall be adapted for specific cases, is set forth in § 18–1.1651–2.

(b) Prior to the execution of such agreement, one copy of each of the following shall be deposited by the contractor with the designated installation:

(1) A copy of the instrument by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(2) An opinion of counsel for the contractor that the change of name was properly effected in accordance with applicable law; and

(3) A list of all contracts which have not been finally settled between NASA and the contractor, showing for each contract the contract number and the name and address of the installation involved.

§ 18–1.1650 Procedures.

(a) Any NASA installation within the continental United States, upon being notified of a successor in interest to, or change in name of, one of its contractors,

shall promptly report such information by letter to the Director of Procurement.

(b) To avoid duplication of effort on the part of NASA installations in preparing and executing agreements to recognize a change of name or successor in interest, only one supplemental agreement will be prepared to effect necessary changes for all contracts between NASA and the contractor involved. The Director of Procurement will, in each case, designate the installation responsible for taking all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest, or recognizing a change of name, including without limitation the following:

(1) Obtaining from the contractor a list of the affected contracts, the names and addresses of the installations responsible for these contracts, and the required documentary evidence;

(2) Drafting and executing a supplemental agreement to one of the contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name; and

(3) Instituting and monitoring procedures for security clearance.

A supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. Each supplemental agreement will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the installations having contracts subject to the supplemental agreement.

(c) The agreement and supporting documents shall be reviewed for legal sufficiency by the legal office at the designated installation.

(d) After execution of the supplemental agreement, the designated installation shall:

(1) Forward an authenticated copy of the supplemental agreement to the Office of Procurement (Code KDR); and

(2) Advise each of the affected installations, by letter, of the consummation of the supplemental agreement and request that a change order be issued for each affected contract. (A copy of the supplemental agreement should be enclosed—see § 18–1.1651–3.)

(e) For each such affected contract, the contracting officer shall prepare a change order (see § 18–1.1651–4) acknowledging the change in name or successor in interest. The change order will receive the same distribution as the affected contract. The change order will indicate the nature of the transaction, the result attained, and will cite the number of the contract with which the original relevant documents and supplemental agreement are filed.

§ 18–1.1651 Novation agreement formats and related NASA documents.

§ 18–1.1651–1 Successor in interest agreement format.

The following form may be used as appropriate to recognize a corporate successor in interest, in accordance with § 18–1.1602:

AGREEMENT (196)

This Agreement, entered into as of ----------, 19 --, by and between the ABC Corporation, a corporation duly organized and existing under the laws of the State of ---------- with its principal office in the City of ---------- (hereinafter referred to as the "Transferor"); the XYZ Corporation [formerly known as the LMN Corporation], a corporation duly organized and existing under the laws of the State of ---------- with its principal office in the City of ---------- (hereinafter referred to as the "Transferee"); and the United States of America (hereinafter referred to as the "Government").

WITNESSETH:

Whereas, the Government, represented by Contracting Officers of the National Aeronautics and Space Administration, has entered into certain contracts, letter contracts, and purchase orders with the Transferor [namely: ----------] or [as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference;] and the term "the contracts" as hereinafter used means the above contracts, letter contracts, and purchase orders, and all other contracts, letter contracts, and purchase orders, including amendments and change orders thereto, heretofore made between the Government, represented by Contracting Officers of the National Aeronautics and Space Administration, and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties, or obligations thereunder), and including amendments and change orders thereto hereafter made between the Government and the Transferee;

Whereas, as of ----------, 19 --, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a [term descriptive of the legal transaction involved] between the Transferor and the Transferee;

Whereas, the Transferee, by virtue of said assignment, conveyance, and transfer, has acquired all the assets of the Transferor;

Whereas, by virtue of said assignment, conveyance, and transfer, the Transferee has assumed all the duties, obligations, and liabilities of the Transferor under the Contracts;

Whereas, the Transferee is in a position fully to perform the Contracts, and such duties and obligations as may exist under the Contracts;

Whereas, it is consistent with the Government's interest to recognize the Transferee as the successor party to the Contracts;

Whereas, there has been filed with the Government evidence of said assignment, conveyance, or transfer [add if desired, "in the form of a certified copy of the list of the documents required by NASA Procurement Regulation § 18–1.1602"];

[Where a change of name is also involved, such as a prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:

Whereas, there has been filed with the Government a certificate dated ----------, 19 --, signed by the Secretary of State of ----------, to the effect that the corporate name of LMN Corporation was changed to XYZ Corporation on ----------, 19---];

Now therefore, in consideration of the premises, the parties hereto agree as follows:

1. The Transferor hereby confirms said assignment, conveyance, and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the Contracts.

2. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the Contracts in all respects as if the Transferee were the original party to the Contracts.

3. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Contracts with the same force and effect as if the action had been taken by the Transferee.

4. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the Contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the Contracts in all respects as if the Transferee were the original party to the Contracts. The term "Contractor" as used in the Contracts shall be deemed to refer to the Transferee rather than to the Transferor.

5. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

6. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government, pursuant to its obligations under any of the Contracts, shall be deemed to have discharged pro tanto the Government's obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the Contracts to the extent of the amounts so paid or reimbursed.

7. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (i) said assignment, conveyance, and transfer, or (ii) this Agreement, other than those which the Government, in the absence of said assignment, conveyance, and transfer, or this Agreement, would have been obligated to pay or reimburse under the terms of the Contracts.

8. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (i) assumes under this Agreement, or (ii) may hereafter undertake under the Contracts as they may hereafter be amended or modified; and the Transferor hereby waives notice of and consents to any such amendment or modification.

9. Except as herein modified, the Contracts shall remain in full force and effect.

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By ----------
Title ----------

[CORPORATE SEAL] ABC CORPORATION
By ----------
Title ----------

[CORPORATE SEAL] XYZ CORPORATION
By ----------
Title ----------

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation, named above, that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness by hand and seal of said corporation this ____ day of _____, 19__.

By _____

(CORPORATE SEAL)

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ Corporation, named above, that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of said corporation this ____ day of _____, 19__.

By _____

(CORPORATE SEAL)

§ 1.1651–2 Change of name agreement format.

The following form may be used as appropriate to recognize a change in name, in accordance with § 18–1.1603:

AGREEMENT (_____ 196)

This Agreement, entered into as of _____, 19__, by and between the ABC Corporation (formerly the XYZ Corporation and hereinafter sometimes referred to as the "Contractor"), a corporation duly organized and existing under the laws of the State of _____, and the United States of America, represented by the National Aeronautics and Space Administration, (hereinafter referred to as the "Government").

WITNESSETH:

Whereas, the Government, represented by Contracting Officers of the National Aeronautics and Space Administration, has entered into certain contracts, letter contracts, and purchase orders with the XYZ Corporation [namely: _____] or [as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference;] and the term "the Contracts" as hereinafter used means the above contracts, letter contracts, and purchase orders, and all other contracts, letter contracts, and purchase orders, including amendments and change orders thereto, entered into between the Government, represented by Contracting Officers of the National Aeronautics and Space Administration, and the Contractor (whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder);

Whereas, the XYZ Corporation, by an amendment to its certificate of incorporation, dated _____, 19__, has changed its corporate name to the ABC Corporation;

Whereas, a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government and of the Contractor under the Contracts are unaffected by said change; and

Whereas, there has been filed with the Government documentary evidence of said change in corporate name;

Now therefore, in consideration of the premises, the parties hereto agree that the Contracts covered by this Agreement are hereby amended by deleting therefrom the name "XYZ Corporation" wherever it appears in the Contracts and substituting therefor the name "ABC Corporation."

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA

By_____

Title_____

[CORPORATE SEAL]

ABC CORPORATION

By_____

Title_____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation, named above; that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this _____ day of _____, 19__.

By_____

[Corporate Seal]

§ 18–1.1651–3 Sample letter requesting issuance of change order.

The following sample letter format is appropriate to give notice of execution of a novation agreement and to request issuance of a change order, in accordance with § 18–1.1650(d).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
GODDARD SPACE FLIGHT CENTER,
Greenbelt, Maryland, October 15, 1963.

Subject: Novation Agreement.
To: Procurement Officer, Langley Research Center.

1. Your attention is invited to the attached supplemental agreement wherein a transfer of the business of ABC Corporation to XYZ Corporation is recognized.

2. In accordance with NASA Procurement Regulation 1.1650 contracting officer(s) presently responsible for affected contracts placed by your installation, which are listed in the supplemental agreement, should imediately issue a Change Order to each such contract to reflect the change.

JOHN J. JONES,
Procurement Officer,
Goddard Space Flight Center.

§ 18–1.1651–4 Sample change order format.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Change Order

Contract No:

Change Order No:

Date:

Contractor:

Subject:
(Insert type of transaction—merger, etc.)

Pursuant to the provisions of the clause of Modification No. _____ of Contract No. _____ (This reference will be to the Modification actually recognizing the transfer.)

It is hereby acknowledged that said Contract Modification (insert, as appropriate, "effecting recognition of XYZ Corporation as a successor in interest applies in accordance with all of its terms and conditions to this contract," or "effecting recognition of a change of the contractor's name from ABC Corporation to XYZ Corporation applies in accordance with all of its terms and conditions to this contract").

Except as hereby modified, all the terms, convenants, and conditions of said contract as heretofore modified or amended shall remain in full force and effect.

THE UNITED STATES OF AMERICA

By _____
(Signature)

_____
(Contracting Officer)

Subpart 18–1.50—Integration of Quality Requirements in NASA Procurements

§ 18–1.5000 Scope of subpart.

(a) This Subpart sets forth procurement procedures for implementing NASA quality assurance policies of NASA Management Instruction 4–2–2 and detailing the application of the following NASA Quality Publications:

(1) "Quality Program Provisions for Space System Contractors (NPC 200–2)"; and

(2) "Inspection System Provisions for Suppliers of Space Materials, Parts, Components, and Services (NPC 200–3)."

(b) Arrangements for use of Government inspection agencies for quality assurance functions at NASA suppliers' plants are described in Part 18–14 of this chapter, including application of "Quality Assurance Provisions for Government Agencies (NPC 200–1A)."

§ 18–1.5001 Policy.

(a) Quality is a factor for consideration in each step of the procurement process. The inclusion in procurements of realistic quality requirements and the appropriate technical application of the NASA Quality Publications are essential to accomplish NASA program objectives.

(b) Quality requirements shall be definitized and included in the procurement documents as early as posible.

§ 18–1.5002 Classification of NASA procurements.

For purposes of quality requirements, procurements by NASA are classified in the following three general categories:

(a) Category 1—Space systems, major subsystems, and complex assemblies, as described in Quality Publication NPC 200–2; and test and check-out equipment, instrumentation, and launch facilities used in launching, operating, and maintaining vehicles or craft in space, including those for static test.

(b) Category 2—Materials, parts, components, and services for the space systems listed in Category 1; and test equipment used for ground testing but not included in Category 1.

(c) Category 3—All other procurements.

§ 18–1.5003 Responsibilities of NASA personnel.

(a) *Originators of procurement requests.* Originators of procurement requests shall consult as early as possible with installation personnel responsible for quality assurance to determine or obtain appropriate quality assurance provisions for incorporation in such requests.

(b) *Installation personnel responsible for quality assurance.* Installation personnel responsible for quality assurance shall:

(1) For category 1 procurements—Prepare quality program requirements in accordance with applicable provisions of NPC 200–2. Prepare pertinent portions of the work statement using available quality data, pertinent NASA quality information, and the provisions of § 18–1.5005(a).

(2) For category 2 procurements—Prepare inspection system requirements in accordance with applicable provisions of NPC 200–3, applicable portions of 200–2, available quality data, high-reliability specification guidelines, pertinent NASA quality information, and the provisions of § 18–1.5005(b).

(3) For category 3 procurements—Cite applicable quality requirements, such as portions of the Quality Publication(s), Government or non-Government specifications and standards, or other criteria prepared especially for the procurement being requested.

(4) For all categories—

(i) Cite the applicable specifications, quality standards, design quality criteria, and other documents which identify and quantify quality requirements, including standard contract clauses established in this chapter, or as appropriate by the NASA installations; and

(ii) Cite the appropriate types and places of performance of Government quality assurance functions (i.e., quality or inspection system evaluation, in-process inspection, end-item inspection, and acceptance inspection), indicating whether their accomplishment shall be by the NASA installation or an inspection agency or both. (See Part 18–14 of this chapter (b) for application of NPC 200–1A.)

(c) *Contracting officers.* In accordance with paragraph (1) of this section, officers, with or through installation personnel responsible for quality assurance shall:

(1) Review each procurement document to ensure that definitive quality requirements are included;

(2) Determine, if quality requirements have been omitted or appear to be inadequate, the applicable quality requirements by consultation and verification with quality assurance personnel and the originator of the procurement;

(3) Advise all prospective contractors of the quality requirements for the particular procurement;

(4) Ensure that the provisions of the contract are specific as to the contractor's responsibility for meeting quality requirements;

(5) Ensure that the contractor meets the terms and conditions of the contract relative to quality requirements;

(6) Ensure that responsibility is assigned for performance of Government quality assurance functions at suppliers' plants to a NASA installation or to an inspection agency, or both; and

(7) Notify the contractor, the inspection agency, and the assigned representatives of the NASA installation as to quality assurance functions delegated to an inspection agency and the functions to be performed by the NASA installation in accordance with Part 18–14 of this chapter. Letters outlining delegated functions shall be specific as to the quality assurance effort required, and those outlining functions to be performed by the NASA installation at plant sites shall set forth the duties, responsibilities, and authority of installation personnel assigned to perform these functions.

(d) *Detailed implementation.* Detailed procedures (e.g., for routing of procurement requests and quality assurance documents, specifying the copies required for review and comment and the means of obtaining and distributing the Quality Assurance Provisions) shall be established by the individual NASA installations.

§ 18–1.5004 Procedures.

This section specifies certain required actions with regard to quality assurance at different stages of the procurement process.

(a) *Procurement requests.* Each procurement request shall contain the quality requirements established for that procurement and be complete with respect to the requirements of § 18–1.5003.

(b) *Procurement plan.* The procurement plan shall include:

(1) The general quality requirements intended to be made a part of the contract; and

(2) A statement as to the type and extent of Government quality assurance functions to be performed by the NASA installation and, as applicable, the inspection agency.

(c) *Invitations for bids and requests for proposals.* Invitations for bids and requests for proposals shall include:

(1) The detailed quality requirements applicable to the procurement with reference to the specific provisions of NASA Quality Publications and other applicable documents;

(2) A requirement, in requests for proposals, that prospective contractors briefly describe the quality system to be used. Where NPC 200–2 is to be invoked for a major system, proposals should include a preliminary quality program plan with details matching the degree of definitization in the technical proposal; and

(3) Copies of NASA Quality Publications NPC 200–2 and 200–3, as applicable, and a statement that the quantity of these publications required for performance of the contract will be furnished to the Contractor by the contracting officer. (Installations receiving requests for these publications from individuals or firms other than as specified herein should advise the requesters that the publications are available from the Superintendent of Documents, Washington, D.C.)

(d) *Bidders' conferences.* When bidders' conferences or oral briefings are held, installation personnel responsible for quality assurance will present quality requirements of the procurement.

(e) *Evaluation of proposals.* Technical evaluation shall include consideration of each prospective contractor's quality system, capability, and past performance prior to final recommendation for award. In addition, these quality factors are items to be considered during preaward surveys in accordance with § 18–1.905–50. Prospective contractors not meeting minimum quality standards may be considered nonresponsive. These actions are required regardless of the evaluation method used. Installation personnel responsible for quality assurance will participate.

(f) *Contract negotiations.* Installation personnel responsible for quality assurance should participate in contract negotiation meetings to provide technical support in the quality area to NASA contract negotiators.

(g) *Preparation of contract.* The contract is the only instrument which binds the contractor and the Government. Therefore, the contract will include the specific terms and conditions of all NASA quality requirements that have been established for the procurement.

(h) *Inspection and acceptance.* (See Part 18–14 of this chapter.)

§ 18–1.5005 Technical factors.

The following shall be considered and appropriate provisions made in the work statement when NPC 200–2 and 200–3 or portions thereof are invoked.

(a) *NASA NPC 200–2.*

Paragraph number	*Description of action*
1.2	NPC 200–2 shall be invoked by reference (e.g., "The contractor shall establish and maintain an effective quality program to satisfy, as a minimum, the requirements of NASA Quality Publication NPC 200–2").
1.4	Detailed reliability requirements shall be stated.
1.5	The prime contractor may be required to submit quality program plans for major subcontractors to the NASA installation for review, notwithstanding the requirement for the contractor's quality program to cover the full scope of contracted work. Major subcontractors may be defined in generic terms for a particular procurement.
2.2	Any deviations from Appendix B for documents requiring approval, review, or information shall be considered.
2.2.1	The time for submission and approval of all documents requiring NASA approval shall be specified.
4.2.2	Existing preferred parts lists desired to be cited in the contract, or required to be established by the contractor, shall be identified or described.
4.3.1	Any additional requirements for documentation and submission of qualification test procedures shall be specified.

Paragraph number	Description of action
4.3.5	The agreed-upon intervals desired for submission of the qualification status list shall be specified.
4.4, 14.2.1	Requirements for mechanized or electronic data processing shall be stated.
5.3.1	When the prime contractor invokes NPC 200–2 or 200–3 in subcontracts, the subcontractor shall furnish required documentation to him. The prime contractor shall forward copies to the NASA installation and designated representatives as specified in the contract. The use of a contractor's equivalent specification in lieu of NPC 200–3 is permissible, provided that it has been submitted to the NASA installation for review two weeks prior to its use in procurement documents.
14.3	The extent of laboratory facilities to be established and failure analysis function to be performed by the contractor at the launch site shall be stated. Time periods for notification of failures and malfunctions and for initiation of corrective action shall be stated.

(b) *NASA NPC 200–3.*

Paragraph number	Description of action
1.2	NPC 200–3 should be invoked by reference (e.g., "The supplier shall establish and maintain an inspection system which satisfies the requirements of NASA Quality Publication NPC 200–3").
1.4	Detailed reliability requirements shall be stated.
1.5	Inspection plans for major subcontractors (major subcontracts may be defined in generic terms for a particular procurement) may be required to be submitted by the prime contractor to the NASA installation for review notwithstanding the requirement for the contractor's inspection plan to cover the full scope of contracted work.
3.1	When the prime contractor invokes NPC 200–3 in subcontracts, the subcontractor shall furnish required documentation to him. The prime contractor shall forward copies to the NASA installation and designated representatives as specified in the contract. The use of a contractor's equivalent specification in lieu of NPC 200–3 is permissible, provided that it has been submitted to the NASA installation for review two weeks prior to its use in procurement documents.
3.5	Requirements for test specimens of raw materials to be provided with fabricated articles shall be stated.
3.6	Inspections and tests desired but not contained in specifications and standards referenced in the contract shall be stated.
3.12	Requirements for sampling inspection, if applicable, or special instructions for screening inspection in lieu of sampling, shall be stated.
3.13	Requirements for mechanical or electronic processing of data shall be stated.
	The applicability of paragraph 5.7, "Identification," of NPC 200–2, shall be stated.

Subpart 18–1.51—Integration of Reliability Requirements Into NASA Procurements

§ 18–1.5100 Scope of subpart.

This subpart establishes procedures for implementing reliability policies prescribed in NASA Management Instruction 4–2–1 with the procurement of systems, by:

(a) Establishing general principles of systematic reliability assurance actions on NASA procurements;

(b) Detailing the application of NASA Reliability Publication "Reliability Program Provisions for Space Systems Contractors" (NPC 250–1); and

(c) Defining the level at which reliability program requirements are to be placed on contractors.

§ 18–1.5101 Policy.

NASA reliability policy, as reflected in NASA Management Instruction 4–2–1, is that:

(a) Every practical means shall be employed to achieve high system reliability at the earliest possible stage of system development;

(b) Reliability program requirements shall be placed on NASA system contractors; and

(c) Contractor performance in achieving system reliability will be guided and monitored by the cognizant NASA field installation.

§ 18–1.5102 Definitions.

For the purpose of this subpart, the following definitions apply:

(a) Major system element—Any element of a system considered by the cognizant NASA installation to be sufficiently critical to reliability of the system to require use of a formal reliability program from its design through end use.

(b) Reliability—The probability that a system, subsystem, component, or part will perform its required functions under defined conditions at a designated time and for a specified operating period.

(c) Reliability program—A series of tasks, systematized under a comprehensive plan, which is designed to achieve the required level of reliability in the design and development of a hardware end item.

(d) Reliability assurance—A planned and systematic pattern of all actions necessary to provide adequate confidence that a space system or portion thereof (including test equipment) will perform reliably in actual operation. This includes actions to—

(1) Plan for achievement of satisfactory reliability when formulating procurement documents;

(2) Plan and execute reliability programs pertinent to each phase of the work from design through end use of the system hardware;

(3) Monitor and guide contractor reliability efforts; and

(4) Ascertain and ensure that the necessary level of reliability is being attained.

§ 18–1.5103 Application.

(a) The procedures prescribed in this subpart are applicable to:

(1) New procurements of complete space systems; principal systems making up a space system (e.g., launch vehicles, spacecraft, test equipment, etc.); critical subsystems; or critical components; where the cost of the procurement is estimated in the Procurement Plan to exceed $1,000,000. (See paragraph (b) of this section for smaller procurements of critical items.) It is not necessarily applicable to smaller procurements, to procurements of noncritical subsystems, or to procurements where the contractor does not have design responsibility.

(2) Amendments to existing contracts of the types stated in subparagraph (1) of this paragraph above which after amendment exceed $1,000,000. In applying NPC 250–1 to existing contracts, cognizant personnel shall exercise discretion to prescribe only those program requirements still considered timely in light of project completion status and to prescribe them to the extent that anticipated benefits are considered to be commensurate with cost.

(b) For procurements of $1,000,000 or less where the contractor has design responsibility for a space system or for critical hardware, end items, or equipment to serve as part of a space system (including critical test equipment), the cognizant NASA installation shall:

(1) Determine and impose selected applicable reliability program requirements (e.g., design review, design specifications, failure analysis, parts and materials program, qualification and flight assurance testing); and

(2) Follow those procedures set forth in § 18–1.5104(a) considered by the installation to be applicable.

§ 18–1.5104 Responsibilities.

(a) *Originators of procurement requests.* Originators of procurement requests shall consult as early as possible with appropriate reliability assurance personnel to determine the extent of applicability of NASA Reliability Publication 250–1 to the procurement and shall:

(1) Summarize, in the procurement request, the extent to which the reliability program provisions of NPC 250–1 will be placed on the contractor;

(2) Cite, in the procurement request, applicable specifications, standards, design reliability criteria, or other documents which further define reliability requirements;

(3) Assist contracting officers in the preparation of procurement plans to ensure that the plans include necessary provisions for reliability assurance;

(4) Provide in the Statement of Work detailed guidance on the extent of applicability of the provisions of NPC 250–1 and other reliability documents of the contract (for technical factors requiring definitization, see § 18–1.5106); and

(5) Provide to the contracting officer necessary copies of items described in subparagraph (2) of this paragraph for inclusion in the request for proposal, or advise the contracting officer as to where they can be obtained.

(b) *Contracting officers.* Contracting officers, with or through appropriate reliability assurance personnel, shall:

(1) Review the reliability assurance requirements established by the originator of each procurement;

(2) Determine the applicable requirements where reliability assurance requirements appear to be inadequate or have been omitted (this will be accomplished in coordination with, and with verification by, the originator);

(3) Advise all prospective contractors for the procurement in question of reliability requirements and reliability program requirements for the particular procurement;

(4) Ensure that the provisions of the contract are specific as to the contractor's responsibility for meeting reliability requirements; and

(5) Ensure that the contractor meets the terms and conditions of the contract relative to reliability requirements.

(c) *Reliability assurance personnel.* Reliability assurance personnel shall:

(1) Advise and assist originators of procurement requests in performing the functions prescribed in paragraph (a) of this section;

(2) Advise and assist contracting officers in the functions prescribed in paragraph (b) of this section;

(3) Advise and assist installation project personnel in guidance and monitorship of contractor reliability programs; and

(4) Take other actions as necessary to ensure that the system being procured meets required levels of reliability.

§ 1.5105 Procedures.

(a) *Processing of procurement documents for procurements of systems expected to exceed $1,000,000*—(1) *Procurement requests.* The procurement request for a system will include, in the description of the procurement, a statement of reliability requirements, in accordance with § 18–1.5104(a) (1) and (2).

(2) *Procurement plans.* The procurement plans for a system will contain provisions for reliability assurance, including a summary of reliability program requirements.

(3) *Review of procurement plans.* Section 18–3.852–4(a) (3) of this chapter provides for review by the Deputy Associate Administrator for Programming, NASA Headquarters, of procurement plans to be approved by the Associate Administrator (where the contract is anticipated to exceed $5,000,000).

(4) *Requests for proposals.* Requests for proposals will include:

(i) Detailed definitization of the reliability program requirements and reliability goals for the contract, including extent of applicability of NPC 250–1, and copies of other pertinent documents which define reliability program requirements. (For technical factors requiring decisions or elaboration in work statements, see §§ 18–1.5104(a) (iv) and 18–1.5106.)

(ii) Definition of the degree of detail desired in the proposal to describe the contractor's qualifications in the reliability area and his proposed reliability program. Where only limited detail is desired in the proposal, a requirement for an intermediate reliability program plan will be included for the prospective contractor(s) selected for negotiation.

(iii) Directions for obtaining additional copies (if available) of documents provided in subdivision (ii) of this subparagraph. This will include a statement that the quantity of NPC 250–1 required for performance of the contract will be provided to the contractor by the contracting officer and that additional copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

(5) *Proposal evaluation documentation.* Section 18–3.804–2(b) of this chapter relating to source evaluation procedures in procurements not involving source evaluation boards, specifies that the documentation of technical evaluations of proposals shall include an evaluation of the company's proposed method of achieving the reliability required.

(6) *Reliability representation on source evaluation boards.* Paragraph 300 of the Source Evaluation Board Manual (NPC 402) provides for the participation of the designee of the Director of Reliability and Quality Assurance, NASA Headquarters, in Source Evaluation Board proceedings.

(b) *Monitoring of reliability effort.* The following measures, used in appropriate combinations, are considered effective tools for use by cognizant NASA installations in the guidance and monitoring of contractor reliability efforts:

(1) Use of resident NASA technical representatives in hardware contractor facilities (or, as a minimum, use of frequent reliability surveys by nonresident NASA teams);

(2) Conducting in-house reliability studies; and

(3) Use of independent reliability assessment contractors to assist NASA in assessment of system reliability or evaluation of the effectiveness of the hardware contractor's reliability program.

(c) *Inclusion of NPC 250–1 in the contract.* NASA Reliability Publication NPC 250–1 will be invoked in the contract via an appropriate contract clause designed to clarify any ambiguities which may exist. A sample clause is as follows:

> In performance of work under the contract, the Contractor shall implement a reliability program in accordance with NASA Reliability Publication NPC 250–1 [indicate edition] as further definitized in the Statement of Work. Guidance and monitoring of the Contractor's reliability effort, as well as approval or review authority for reliability program documentation, shall be the responsibility of the Contracting Officer, his authorized technical representatives, or their designees. The Contracting Officer will advise the Contractor, as well as appropriate NASA representatives and the Government inspection agency, by letter as to the identity (title, organization, and location) of his authorized technical representatives and the specific office or offices to which various items of required reliability program documentation shall be submitted.

§ 18–1.5106 Technical factors (requests for proposals and work statements).

Procurement requests and work statements will provide guidance on the following technical factors when NASA Reliability Publication NPC 250–1 is invoked:

(a) NASA Reliability Publication NPC 250–1 prescribes that the contractor's reliability organization will monitor certain tasks, the actual conduct of which is a part of the overall technical project effort. In the preparation of Statements of Work, the originator of the procurement request shall specify that these tasks are requirements unless specifically modified or waived. Paragraph references to NPC 250–1 in this category where additional guidance should be included in the Statement of Work are as follows:

NASA NPC 250–1 paragraph number	*Description of action*
3.5—Maintainability and elimination of human-induced failure.	Define the extent of effort required in these areas with respect to the overall space system and each of its various elements (requirements will often differ from element to element within the system). Where the system involves subsystems capable of being maintained by personnel while in use or where flight safety of personnel is involved, append, or otherwise provide, appropriate documents giving detailed guidance to the contractor on requirements in this area.
3.8—Standardization of design practices..	Make clear that the standards effort will be limited to that required to modify existing contractor standards to meet system requirements and that it is not necessarily intended to have the contractor set up a complete new standards system at NASA expense. Also, provide any NASA design criteria which the contractor will be required to use.

NASA NPC 250–1 paragraph number	*Description of action*
4.3—Testing	The Statement of Work should clearly specify the requirement for: (A) An integrated test program which includes all tests (with specified exceptions) under the contract. Also indicate that tests (except reliability demonstrations) which include reliability inputs, or produce, along with other results, data for evaluation of reliability, should be referred to as the appropriate type of performance test, and not be termed a "reliability" test. (B) Qualification testing of all elements of the system (consistent with project requirement). Indicate required levels of overstress to be employed in these tests where appropriate and specifically require the contractor to submit separate test specifications for each qualification test (containing appropriate overstress requirements), which will be subject to NASA review prior to use. (C) Flight assurance testing requirements at appropriate levels of assembly, together with guidance on required levels of stress to be employed, and configuration control requirements. Require the contractor to submit a separate specification for each flight assurance test, which will be subject to NASA review prior to use.
5.1—General documentation	State whether the contractor is required to establish a data center, and clearly define the scope of effort required of the prime contractor and of subcontractors (as required to be consistent with the system data center). Also make clear that the "unified file" of reliability information is a requirement only where the overall data center is not required.

(b) Additional guidance as to the extent of applicability of reliability task requirements will be given for the following paragraphs of NPC 250–1:

NASA NPC 250–1 paragraph number	*Description of action*
2.2.2—Preliminary reliability program plan (see also Appendix B).	Indicate the degree of detail desired in the proposed reliability program and in the submittal of information on the contractor's qualifications.
2.2.3—Intermediate reliability program plan (see also Appendix C).	Indicate any desired variations from the procedure prescribed in NPC 250–1. Where it is desired to omit this submittal, prescribe that the requirements of this paragraph be combined with those of paragraph 2.2.2 in preparing the proposal.
2.4—Reliability program control	Give specific guidance on those aspects of control for which the NASA installation has special requirements and, if appropriate, for the preferred system of control.
2.6—Subcontractor and supplier control	List those elements of the system considered by NASA to be "major" in terms of the need for reliability control by a formal reliability program. The list may be identified as "suggested" where it is desired to obtain contractor inputs for subsequent negotiation.
2.6.3—Resident representatives	Indicate those of the system elements listed as "major" which are considered by NASA to require use of resident prime contractor representatives in subcontractor facilities. This list may be identified as "suggested" where it is desired to defer the final decision until specific information on subcontracts is proposed.
2.7—Government-furnished property	Indicate which elements, if any, of the system will be Government-furnished property and provide information on the characteristics, including reliability, of each to enable the contractor to plan and propose his reliability program with appropriate consideration for Government-furnished property.
3.3—Reliability prediction and estimation.	Specify the milestone or time at which the initial prediction is required and the succeeding major or intermediate milestone at which revised predictions are required. Also, if appropriate to installation or program requirements, prescribe the method of prediction to be used and furnish detailed supplemental guidance.
3.7—Failure reports	If a specific format and numbering system is to be prescribed by NASA, so indicate.
3.9.2—Parts selection	Where the requirements of the program dictate use of parts already proven for other systems, data on such parts should be provided to enable the contractor to limit the scope of his parts selection effort.
3.9.3—Parts and materials specifications	Provide or cite available specifications for proven parts. Where it is desired to limit the scope of contractor effort in this area, provide appropriate guidance.
4.3.4—Reliability demonstration tests	Provide specific guidance as to type, conditions, and duration of demonstration testing consistent with program requirements.
4.4—Reliability assessment	Make clear that the "assessment" is an evolution of the "prediction" and not an overlapping task. Indicate major and intermediate milestones at which initial and revised assessments are required.
5—Documentation of reliability program	Indicate the specific documentation requirements appropriate to the program (see Appendix F of NPC 250–1), including the number of copies of each document required for submittal.

PART 18–2—PROCUREMENT BY FORMAL ADVERTISING

Sec.
18–2.000 Scope of part.

Subpart 18–2.1—Use of Formal Advertising

18–2.101 Meaning of formal advertising.
18–2.102 Policy.
18–2.103 General requirements for formally advertised contracts.
18–2.104 Types of contracts.
18–2.104–1 General.
18–2.104–2 Fixed-price contracts with escalation.

Subpart 18–2.2—Solicitation of Bids

18–2.200 Scope of subpart.
18–2.201 Preparation of invitations for bids.
18–2.202 Miscellaneous rules for solicitation of bids.
18–2.202–1 Bidding time.
18–2.202–2 Telegraphic bids.
18–2.202–3 Place and method of delivery of supplies.
18–2.202–4 Bid samples.
18–2.202–5 Descriptive literature.
18–2.203 Methods of soliciting bids.
18–2.203–1 Mailing or delivering to prospective bidders.
18–2.203–2 Displaying in public place.
18–2.203–3 Publicity in newspapers and trade journals.
18–2.203–4 Synopses of invitations for bids.
18–2.204 Records of invitations for bids and records of bids.
18–2.205 Bidders mailing lists.
18–2.205–1 Establishment of lists.
18–2.205–2 Removal of names from bidders mailing lists.
18–2.205–3 Reinstatement on bidders mailing lists.
18–2.205–4 Excessively long bidders lists.
18–2.205–5 Release of bidders mailing lists.
18–2.207 Amendment of invitations for bids.
18–2.208 Cancellation of invitations before opening.

Subpart 18–2.3—Submission of Bids

18–2.301 Responsiveness of bids.
18–2.302 Time of bid submission.
18–2.303 Late bids.
18–2.303–1 Definition.
18–2.303–2 Consideration for award.
18–2.303–3 Mailed bids.
18–2.303–4 Telegraphic bids.
18–2.303–5 Hand-carried bids.
18–2.303–6 Notification to late bidders.
18–2.303–7 Disposition of late bids.
18–2.303–8 Records.
18–2.303–9 Inconsistencies in standard forms.
18–2.304 Modification or withdrawals of bids.
18–2.305 Late modifications and withdrawals.

Subpart 18–2.4—Opening of Bids and Award of Contract

18–2.401 Receipt and safeguarding of bids.
18–2.402 Opening of bids.
18–2.403 Recording of bids.
18–2.404 Rejection of bids.
18–2.404–1 Cancellation of invitation after opening.
18–2.404–2 Rejection of individual bids.
18–2.404–3 Notice to bidders of rejection of all bids.
18–2.404–4 Restrictions on disclosure of descriptive literature.
18–2.404–5 All or none qualification.
18–2.405 Minor informalities or irregularities in bids.
18–2.406 Mistakes in bids.
18–2.406–1 General.
18–2.406–2 Apparent clerical mistakes.
18–2.406–3 Other mistakes disclosed before award.
18–2.406–4 Disclosure of mistakes after award.
18–2.407 Award.
18–2.407–1 General.
18–2.407–2 Responsible bidder.
18–2.407–3 Discounts.
18–2.407–4 Price escalation.
18–2.407–5 Other factors to be considered.
18–2.407–6 Equal low bids.
18–2.407–7 Statement of award.
18–2.407–9 Protests against award.
18–2.408 Information to bidders.
18–2.409 Synopses of contract awards.

Subpart 18–2.5—Two-Step Formal Advertising

18–2.501 General.
18–2.502 Conditions for use.
18–2.503 Procedures.
18–2.503–1 Step one.
18–2.503–2 Step two.

AUTHORITY: The provisions of this Part 18–2 issued under 42 U.S.C. 2473(b)(1).

§ 18–2.000 Scope of part.

(a) This Part 18–2 sets forth the (1) basic requirements for procurement of supplies and services (including construction) by formal advertising, (2) information to be contained in solicitations of bids, (3) methods of soliciting bids, (4) policies with respect to the submission of bids, and (5) requirements with respect to the opening and evaluation of bids and the awarding of contracts.

Subpart 18–2.1—Use of Formal Advertising

§ 18–2.101 Meaning of formal advertising.

(a) Formal advertising means procurement by competitive bids and awards, as prescribed in this part, and involves the following basic steps:

(1) Preparation of the invitation for bids, by describing the requirements of the Government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related documents, whether attached or incorporated by reference, provided prospective bidders for the purpose of bidding;

(2) Publicizing the invitation for bids, through distribution to prospective bidders, posting in public places, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening;

(3) Submission of bids by prospective contractors; and

(4) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered (or rejecting all bids).

§ 18–2.102 Policy.

(a) Chapter 137 of Title 10 of the United States Code (see 10 U.S.C. 2304 (a)), which is applicable to procurements by NASA, provides that purchases of and contracts for property or services shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. It further provides that, if the use of formal advertising is not feasible and practicable, negotiation of contracts is authorized under certain circumstances enumerated therein. The circumstances are set forth in Subpart 18–3.2 of this chapter.

(b) Chapter 137 of Title 10 of the United States Code (10 U.S.C. 2306(f)) provides that a contractor or subcontractor shall be required to submit cost or pricing data for certain contract modifications, and shall be required to certify that, to the best of his knowledge and belief, the cost or pricing data he submits is accurate, complete, and current. To insure compliance with this requirement, contracting officers shall follow the instructions set forth in § 18–3.807–3 of this chapter before agreeing to a price adjustment of a formally advertised contract.

§ 18–2.103 General requirements for formally advertised contracts.

No contract shall be made as a result of formal advertising unless:

(a) Bids have been solicited as required by Subpart 18–2.2;

(b) Bids have been submitted as required by Subpart 18–2.3;

(c) Determination has been made as to the responsible bidder whose bid is responsive to the invitation for bids and is most advantageous to the Government, price and other factors considered, and award is made as prescribed in Subpart 18–2.4; and

(d) Such clearances and approvals, if any, required under Subpart 18–50.1 of this chapter have been obtained.

§ 18–2.104 Types of contracts.

§ 18–2.104–1 General.

Contracts awarded after formal advertising shall be of the firm fixed-price type, except that fixed-price contracts with escalation may be used, subject to the provisions of §§ 18–2.104–2 and 18–2.407–4, where such flexibility is necessary and feasible. In circumstances in which their use is appropriate, such fixed-price contracts may be of the following types:

(a) Definite Quantity Contracts,
(b) Requirements Contracts, or
(c) Indefinite Quantity Contracts.

§ 18–2.104–2 Fixed-price contracts with escalation.

Escalation clauses are not normally desirable, but in appropriate cases clauses providing for upward and downward revision of prices may be used in order to protect the interest of both the Government and the supplier, particularly in long-term contracts where potential increased costs might otherwise cause suppliers to bid at unreasonable prices. Where the contracting officer, on the basis of his knowledge of the market or previous advertisements for like items,

expects that a requirement for firm fixed-price bids will unnecessarily restrict competition, or unreasonably increase bid prices, he may include an approved escalation clause in the invitations for bids, Any escalation clause shall provide an escalation ceiling identical for all bidders, so that each bidder is afforded an equal opportunity to bid on the escalation basis. The policy governing the evaluation of bids providing for price escalation is set forth in § 18–2.407–4.

§ 18–2.105 Review of the procurement request for property utilization.

If the proposed procurement is for an item of supply, the procurement office will review the procurement request for compliance with the property utilization requirements set forth in NASA Management Instructions 20–4–2 and 20–4–5.

Subpart 18–2.2—Solicitation of Bids

§ 18–2.200 Scope of subpart.

This subpart prescribes procedures for the (a) preparation of invitations for bids, (b) solicitation of bids, and (c) publicizing of proposed procurements.

§ 18–2.201 Preparation of invitations for bids.

Invitations for bids shall contain the applicable information called for in this §18–2.201 and any other information required for a particular procurement. Invitations for bids shall permit such full and free competition as is consistent with the procurement of the types of supplies and services required.

(a) For supply and service contracts, including construction, invitations for bids shall contain the following information if applicable to the procurement involved.

(1) Invitation number. Invitations for bids shall be numbered consecutively, preceded by the applicable letter symbol of the installation concerned.

(2) Name and address of issuing installation.

(3) Date of issuance.

(4) Description of supplies and services to be furnished under each item, in sufficient detail to permit proper competition.

(5) Date, hour, and place of opening. Prevailing local time shall be used and appropriate identification of the local time system under which the installation is operating shall be included; e.g., 11:00 a.m., e.d.s.t. See § 18–2.202–1 concerning bidding time.

(6) Time of delivery or performance requirements.

(7) Permission, if any, to submit telegraphic bids. (See § 18–2.202–2.)

(8) Permission, if any, to submit alternative bids, including alternative material or design.

(9) Bid guarantee, performance and payment bond requirements, if any.

(10) In situations where it is likely that Government property will be used, a provision that if the bidder plans to use, in performing the work bid upon, any items of Government property in the bidder's possession under a facilities contract or other agreement independent of the invitation for bids, the bidder shall so state in the bid and, upon request of the contracting officer, shall submit evidence that a facilities contract or other separate agreement authorizes the bidder to use each item of such Government property for performing the work bid upon. The invitation for bids shall describe any property expected to be furnished by the Government for performance of the contract.

(11) When considered necessary by the contracting officer, a requirement that all bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated period shall be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other pre-award processing. To accomplish the foregoing, a paragraph subtantially as follows may be included in the invitation for bids:

BID ACCEPTANCE PERIOD (JANUARY 1964)

Bids offering less than _____ days for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected.

(12) In unusual cases, where bidders are required to have special technical qualifications or experience due to the complexity of the proposed procurement or other reason, a statement of such qualifications or experience.

(13) Any authorized special provisions necessary for the particular procurement, relating to such matters as progress payments, patent licenses, liquidated damages, profit limitations, escalation, Government property, etc.

(14) Any additional contract provisions or conditions required by law or regulation.

(15) Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference.

(16) Any applicable wage determinations of the Secretary of Labor (for construction, alteration, or repair contracts).

(17) Basis upon which award will be made, particularly where alternate bids are invited.

(18) Pending revision of paragraph 4 of the Terms and Conditions of the Invitation for Bids on the back of Standard Form 30 (October 1957 edition) and Standard Form 33 (October 1957 edition), and of paragraph 7 of Standard Form 22 (January 1961 edition), the following provision shall be substituted, as to each form, in lieu of the cited paragraph:

LATE BIDS AND MODIFICATIONS OR WITHDRAWALS (MARCH 1964)

(a) Bids and modifications or withdrawals thereof received at the office designated in the invitation for bids after the exact time set for opening of bids will not be considered unless: (i) they are received before award is made; and either (ii) they are sent by registered mail, or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized; and it is determined by the Government that the late receipt was due solely to delay in the mails, or delay by the telegraph company, for which the bidder was not responsible; or (iii) if submitted by mail (or by telegram if authorized), it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation: *Provided*, That timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt at such installation (if readily available) within the control of such installation or of the post office serving it. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) Bidders using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late bid was timely mailed.

(c) The time of mailing of late bids submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is (i) where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the bidder which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (ii) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the bid shall not be considered.

(19) Requisition or other purchase authority or appropriation and accounting data.

(20) A statement substantially as follows (prominently placed in the invitation):

CAUTION TO BIDDERS—LATE BIDS (JUNE 1963)

See the special provision entitled "Late Bids, Modifications, or Withdrawals" which provides that late bids, modifications, or withdrawals thereof sent through the mails will be considered only if sent by registered or certified mail for which a postmarked receipt has been obtained unless the delay in receipt of the bid at the designated office is due solely to mishandling by the Government.

(21) If the resulting contract is expected to exceed $100,000, the "Contractor and Subcontractor Cost or Pricing Data" clause (see § 18–3.807–4 of this chapter).

(22) The Certification of Noncollusion as required by § 18–1.115 of this chapter.

(23) The representation pertaining to equal opportunity participation required by § 18–12.802–4 of this chapter.

(b) *For supply and service contracts, excluding construction, the invitation for bids shall contain the following in addition to the information required by paragraph (a) of this section if applicable to the procurement involved.*

(1) Discount provisions. See § 18–2.407–3, requiring the establishment of standards of evaluation to be applied to offer discounts prior to issuance of an invitation for bids.

(2) The quantity of supplies or services to be furnished under each item, and any provision for quantity variation.

(3) Any requirement for prior testing and qualification of a product, for example, where the item to be purchased is on a qualified products list.

(4) When needed for the purpose of bid evaluation, pre-award surveys, or inspection, a requirement that bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. Where it is reasonably anticipated that producing facilities will be used in the performance of the contract, or where the Government requires the information, bidders will be required to state (i) the full address of principal producing facilities (if designation of such address is not feasible, a full explanation should be required) and (ii) names and addresses of owners and operators, if other than bidder.

(5) Place and method of delivery (see § 18–2.202–3).

(6) Preservation, packaging, packing, and marking requirements, if any.

(7) Quality assurance requirements applicable to the procurement in accordance with Subpart 18–1.50 of this chapter and place, method, and conditions of inspection.

(8) If no award will be made for less than the full quantities advertised, a statement to this effect. Otherwise, in accordance with Condition 8 on the reverse of Standard Forms 30 and 33, bids may be submitted for quantities less than those specified.

(9) If award is to be made by specified groups of items or in the aggregate, a statement to that effect.

(10) If a provision is included to give the Government an option to increase or decrease quantities specified, a maximum percentage of such increase or decrease also should be stated.

(11) Any applicable requirements for samples or descriptive material.

§ 18–2.202 Miscellaneous rules for solicitation of bids.

§ 18–2.202–1 Bidding time.

(a) *Policy.* Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to permit prospective bidders to prepare and submit bids. This will facilitate competition on reasonable and equal terms. Undue limitation of bidding time tends to restrict competition. Also, when prospective bidders do not have adequate time for computing prices and obtaining needed information on which to base their bids, higher prices to the Government may result from inclusion of unnecessary contingency allowances or the unwillingness of some to submit bids.

(b) *Factors to be considered.* The urgency of the Government's need for the items or services, the complexity of the invitation, the extent of subcontracting anticipated, the use of pre-invitation notices, the geographic distribution of bidders, the normal time for mail transmission of both invitations and bids, and other related factors must be considered in establishing bidding time. For example, a bidding time of 30 days may be inadequate when bidders are required to prepare special drawings, designs, and samples, or to obtain quotations from several suppliers and subcontractors, as frequently is the case in construction and production contracts. Conversely, a bidding time of 15 days may be adequate when bids would reasonably be expected to be based on stocks on hand, or current regular production, or service personnel and facilities regularly available (as in the case of maintenance and repair of structures, and similar work).

(c) *Minimum bidding time.* As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. This rule need not be observed in special circumstances, or where the urgency for the supplies or services does not permit such delay.

§ 18–2.202–2 Telegraphic bids.

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer the date for the receipt of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms, of when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the invitation for bids shall require the bidder to include in the telegraphic bid specific reference to the invitation, the items or sub-items, quantities, and unit prices for which the bid is submitted, the delivery offered by the bidder, and a statement that the bidder agrees to all the terms, conditions, and provisions of the invitation. In order that the contract may be executed on the proper form, the invitation for bids will also provide that telegraphic bids must be confirmed on the prescribed form and submitted promptly to the contracting officer.

§ 18–2.202–3 Place and method of delivery of supplies.

(a) *FOB origin.* Invitations for bids solicited FOB origin shall state that bids will be evaluated on the basis of bid price plus transportation cost to the Government from point of origin to one or more designated destinations.

(b) *FOB destination.* Invitations for bids solicited FOB destination should inform prospective suppliers of any known lack of transportation facilities at destination or other factors which may affect the supplier's transportation costs.

(c) *FOB origin or destination.* Invitations for bids shall include as much of the following information as is pertinent to the particular procurement and shall require bidders to furnish the Government such of the following information as may be appropriate:

(1) Method of shipment, such as rail, water, air, or truck;

(2) Minimum quantities or lots, such as less than carload, less than truckload, carload, or truckload. Where appropriate, the invitation should elicit information of the minimum size of shipments which the prospective supplier will make so that freight evaluation may be on a realistic basis. The bidder should be cautioned that if he tenders shipment in lesser quantities, he may be charged with any resultant excess costs;

(3) Guaranteed shipping weight. Bidders should be required to furnish information regarding shipping weight and cube of items to be procured so that proper transportation costs can be computed. The bidder should be cautioned that, if actual shipping weights or cubes vary from the guarantees, he may be charged with resultant excess costs;

(4) Packing, crating, and other preparations;

(5) Transit privileges (traffic management personnel can furnish necessary information and analyses of situations where transit privileges may be beneficial); and

(6) Any other shipping information required for evaluation.

(d) *Destination unknown.* When the exact destination of the supplies being purchased is not known at the time bids are solicited, but the general geographical section in which delivery will be made is known, such as East Coast, Middle West, or West Coast, for purposes of evaluation of bids only, a definite place or places shall be designated in the known geographical sector of delivery as the point to which transportation costs will be computed in determining the low bidder. However, the invitation should specify that bids will be submitted FOB origin and that shipment will be made on Government bill of lading. So that prospective bidders may understand the method of evaluation, the invitation shall contain a provision substantially as follows:

> For the purpose of evaluating bids (and for no other purpose) the final destinations for the supplies will be considered to be as follows [insert destination(s)].

§ 18–2.202–4 Bid samples.

(a) *Definition.* The term "bid sample" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. The term does not include any type of sample submitted after bid opening such as one submitted to evidence a manufacturer's ability to produce.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure procurement of an acceptable product. It may be appropriate to require bid samples, for example, where the procurement is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable specifications. However, where more than a minor portion of the characteristics of the product cannot be adequately described in the specification, the product should be procured by negotiation.

(c) *Justification.* The reason why acceptable products cannot be procured without the submission of bid samples shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of invitation for bids.* When bid samples are required, the invitation for bids shall (1) state the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required, (2) state clearly the purpose for which the samples are needed and the criteria against which they will be tested or evaluated, and (3) include a provision in accordance with paragraph (e) of this section. Where samples are not considered necessary and a waiver of the sample requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, samples will not be required.

(e) *Invitation for bids provision.* When bid samples are required, a provision substantially as follows (modified, if appropriate, in accordance with paragraph (f) of this section), shall be included in the invitation for bids:

BID SAMPLES (JANUARY 1964)

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be evaluated to determine compliance with the specifications or other requirements of this Invitation for Bids.

(b) Failure of samples to conform to the requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

(c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics for which the sample was required and shall conform to the specifications as to all other characteristics.

(f) *Waiver of requirement for bid samples.* (1) The provision prescribed in paragraph (e) of this section may be modified to provide that the requirement for furnishing samples may be waived as to a bidder who offers a product previously or currently being procured or tested by NASA and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids so that further evaluation or testing would not add to the Government's knowledge of the acceptability of the product. When provision is to be made for such waiver, the invitation for bids provision in paragraph (e) of this section shall be modified by adding substantially the following at the end of paragraph (b) of this section:

However, the requirement for furnishing samples may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to [insert name of the NASA installation] on a previous procurement and (ii) the Contracting Officer determines that such product was previously procured or tested by the [insert name of the NASA installation] and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids. (January 1964)

(2) Where considered necessary because of the nature of the products, the provision in subparagraph (1) of this paragraph may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

(g) *Unsolicited samples.* If bid samples are not required by the invitation for bids, but samples are furnished with a bid, they will not be considered as qualifying the bid and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(h) *Disposition of samples.* Samples, if not destroyed in testing, shall be returned to bidders at their request and expense, unless otherwise specified in the invitation for bids. See paragraph 2(b) of the Terms and Conditions of the Invitation for Bids of Standard Forms 30 and 33.

§ 18–2.202–5 Descriptive literature.

(a) *Definition.* As used in this § 18–2.202–5, the term "descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product, and excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature as a part of their bids unless the procurement office deems that such literature is needed to enable it to determine before award whether the products offered meet the specification requirements of the invitation for bids and to establish exactly what the bidder proposes to furnish. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of invitation for bids.* (1) When descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening or if the literature furnished does not comply with the requirements of the invitation for bids. Where descriptive literature is not considered necessary and a waiver of the literature requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, descriptive literature will not be required.

(2) Except as provided in subparagraph (3) of this paragraph, if bidders are to furnish descriptive literature as a part of their bids, a provision substantially as follows (modified, if appropriate, in accordance with paragraph (e)(1) of this section) shall be included in the invitation for bids:

REQUIREMENT FOR DESCRIPTIVE LITERATURE (JANUARY 1964)

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to [------*].

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

(3) When brand names or equal descriptions are used, the requirements of this § 18–2.202–5 are met by inserting in the invitation for bids the brand names provision set forth in 32 CFR 1.1206, as authorized by Subpart 18–1.12 of this chapter.

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*The contracting officer shall insert significant elements such as design, materials, components, or performance characteristics; or methods of manufacture, construction, assembly, or operation, as appropriate.

(e) *Waiver of requirements for descriptive literature.* (1) The provision prescribed in paragraph (d)(1) of this section may be modified to provide that the requirements for furnishing descriptive literature may be waived as to a particular bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product previously or currently being furnished NASA, and (ii) it is determined by the contracting officer that such product complies with the specification requirements of the current invitation for bids. When provision is to be made for such waiver, the invitation for bids provision in paragraph (d)(2) of this section shall be modified by adding substantially the following at the end of paragraph (b) of this section:

However, the requirements for furnishing descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to [insert name of the NASA installation] under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids. (January 1964)

(2) If the invitation for bids contains a provision for waiver in accordance with subparagraph (1) of this paragraph, a bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

(f) *Unsolicited descriptive literature.* If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) See § 18–2.404–4 for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

§ 18–2.203 Methods of soliciting bids.

§ 18–2.203–1 Mailing or delivering to prospective bidders.

Invitations for bids or pre-invitation notices (see § 18–2.205–4(c)) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition. Invitations for bids may be mailed for informational purposes to other Government agencies, including procurement information offices. In the case of construction contracts, copies of the invitation for bids, including plans and specifications, if available, may be furnished upon request to nonbidders having a direct interest in the bidding, such as subcontractors, materialmen, and suppliers of equipment for installation or use by the prime contractor on the project. Such copies may also be furnished to any established trade publication or association requesting them, provided that the activities of the publications or associations are not restricted to publishing bid information for which a charge is made.

§ 18–2.203–2 Displaying in public place.

Copies of unclassified invitations for bids shall be displayed at the procurement office of the installation and at such other public places as are determined to be appropriate and desirable.

§ 18–2.203–3 Publicity in newspapers and trade journals.

(a) *Free publicity.* A brief announcement of the proposed procurement, or copies of unclassified invitations for bids, may be made available for free publication to newspapers and to trade journals and magazines.

(b) *Paid advertisements.* Use of paid advertisements for procurement purposes is not currently authorized within NASA.

§ 18–2.203–4 Synopses of invitations for bids.

Synopses of invitations for bids shall be prepared and publicized in the Department of Commerce publication, Commerce Business Daily, in accordance with § 18–1.1003 of this chapter.

§ 18–2.204 Records of invitations for bids and records of bids.

Each procurement office shall retain a record of every invitation for bids issued and distributed by it and of each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

§ 18–2.205 Bidders mailing lists.

§ 18–2.205–1 Establishment of lists.

(a) Bidders mailing lists shall be established by each NASA procurement office to ensure access to adequate sources of supplies and services except where the requirements of the procurement office can be obtained within the local trade area through utilization of the simplified small purchase procedures (Subpart 18–3.6 of this chapter), or are nonrecurring.

(b) All qualified suppliers or contractors who have submitted bidders mailing list applications or whom the procurement office considers capable of filling the requirements of a particular procurement shall be placed on the appropriate bidders mailing list.

(c) Bidders Mailing List Application (Standard Form 129) shall be used for obtaining information needed in the establishment and maintenance of bidders mailing lists.

§ 18–2.205–2 Removal of names from bidders mailing lists.

(a) The name of each concern failing to respond to an invitation for bids or pre-invitation notice (see § 18–2.205–4(c)) may be removed from the bidders mailing list without notice to the concern, but only for the item or items involved in such invitation or notice. When a concern fails to respond to two consecutive invitations for bids or pre-invitation notices, its name shall be removed from the bidders mailing list to the extent indicated, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interests of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitations for bids or pre-invitation notices.

(b) The names of concerns which have been (1) debarred from entering into Government contracts or (2) otherwise determined to be ineligible to receive an award of a Government contract shall be removed from the bidders mailing lists to the extent required by such debarment or determination of ineligibility.

§ 18–2.205–3 Reinstatement on bidders mailing lists.

Concerns which have been removed from bidders mailing lists may be reinstated upon request or by filing a new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or ineligibility.

§ 18–2.205–4 Excessively long bidders lists.

(a) *General.* To prevent excessive administrative costs of a procurement in relation to the dollar value of the procurement, bidders mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the list may be reduced by any method consistent with the foregoing, including those described in paragraphs (b) and (c) of this section. The fact that less than an entire mailing list is used shall not in itself preclude furnishing of sets to others upon request therefor, or consideration of bids received from bidders who were not invited to bid.

(b) *Rotation of lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies the rotation. In rotating a list, the interests of small business and the existence of labor surplus areas shall be considered.

(c) *Pre-invitation notices.* In lieu of forwarding complete bid sets in the first instance, the procurement office may send pre-invitation notices to concerns on the mailing list. The notice shall:

(1) Specify the date by which bidders should return the notice in order to receive a complete bid set;

(2) Describe the requirement, or include the schedule of the invitation for bids, so as to furnish a complete item description and a condensation of other essential information which will provide concerns with an intelligible basis for judging whether they have an interest in the procurement; and

(3) Expressly notify the concern that if no bid is to be submitted, it should notify the issuing office in writing if future invitations are desired for the type of supplies or services involved.

Drawings, plans, and specifications normally will not be furnished with the preinvitation notice. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be provided to qualified concerns which request them. This procedure is particularly suitable in procurements where lengthy invitations for bids and long bidders lists are common.

§ 18–2.205–5 Release of bidders mailing lists.

(a) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, and material suppliers, and others having a bona fide interest in such information may be supplied, upon request, with a list of all prospective bidders furnished copies of the plans and specifications.

(b) A list of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising will be listed in the Commerce Business Daily for the benefit of prospective subcontractors in accordance with §18–1.1003–3(b) of this chapter.

§ 18–2.207 Amendment of invitations for bids.

(a) If, after issuance of invitations for bids but before the time set for opening, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids.

(b) Each amendment to an invitation for bids shall:

(1) Be serially numbered, using a separate series of numbers for each invitation for bids concerned;

(2) Include the number of the invitation for bids concerned;

(3) Clearly state the changes made in the invitation for bids and the extension of the opening date, if any (if no extension of opening date is involved, the amendment shall so state) ; and

(4) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

(c) Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this time for opening must be considered. When only a short time remains before the time set for opening, consideration should be given to notifying bidders of an extension of time by telegraph or telephone. Such notification should be confirmed in writing.

(d) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to bidders in submitting bids on the invitation, or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

§ 18–2.208 Cancellation of invitations before opening.

(a) Cancellation of an invitation for bids usually involves the loss of time, effort, and money spent by the Government and bidders in carrying the procurement process up to the point of cancellation. Invitations for bids should not be canceled unless cancellation is clearly in the public interest, for instance, when there is no longer a requirement for the material or service, or amendments to the invitation would be of such magnitude that a new invitation is desirable. When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

(b) The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, when appropriate, assure prospective bidders that they will be given an opportunity to bid on the resolicitation of bids for any future requirements for the type of material or services involved. The cancellation of an invitation for bids shall be recorded in accordance with § 18–2.403, which requires that a record be made of the fact of cancellation together with a statement of the number of concerns invited to bid and the number of bids received.

Subpart 18–2.3—Submission of Bids

§ 18–2.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids, so that, both as to the method and timeliness of submission and as to compliance with the specifications and other requirements, all bidders may stand on an equal footing and the integrity of the competitive bidding system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids. If a bidder uses his own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation, and (2) award on the bid would result in a binding contract, the terms and conditions of which do not vary from the terms and conditions of the invitation.

§ 18–2.302 Time of bid submission.

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Where telegraphic bids are authorized, a telegraphic bid received by telephone from the receiving telegraph office before the time set for opening of bids shall be considered if such bid is confirmed by the telegraph company with a written telegram.

§ 18–2.303 Late bids.

§ 18–2.303–1 Definition.

Bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late bids."

§ 18–2.303–2 Consideration for award.

A late bid shall not be considered for award unless:

(a) It is received before award and it is determined that the bid was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening, and, except for delay due solely to mishandling on the part of the Government at the installation, would have been received on time at the office designated; or

(b) It is received before award and—

(1) In the case of a mailed bid, it was sent by registered mail, or by certified mail for which an official post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, and it is determined that the lateness was due solely to a delay in the mails (based on evidence pursuant to § 18–2.303–3) ; or

(2) In the case of a telegraphic bid, where the invitation authorized telegraphic bids, the delay was due solely to the telegraph company, for which the bidder was not responsible.

§ 18–2.303–3 Mailed bids.

(a) *Registered mail.* The time of mailing of a late bid mailed by registered mail may be determined by the date in the postmark on the registered mail receipt or registered mail wrapper. The time of mailing shall be deemed to be the last minute of the date shown in such postmark unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time. Such evidence, if appropriately varified in writing by the post office station of mailing, may consist of an entry in ink on the registered mail receipt showing the time of mailing and the initials of the postal employee receiving the item and making the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late unless the bidder furnishes evidence from the post office station of mailing which establishes timely mailing.

(b) *Certified mail.* The time of mailing of a late bid mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be deemed to be the last minute of the date shown in

the postmark on such receipt except where:

(1) The Receipt for Certified Mail identifies the post office station of mailing and the bidder furnishes evidence from such station that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or

(2) An entry in ink on the Receipt for Certified Mail, showing the time of mailing and the initials of the postal employee receiving the item and making the entry, is appropriately verified in writing by the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late.

(c) *Delivery time.* Information concerning the normal time for mail delivery shall be obtained by the contracting officer from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office servicing that installation. When time permits, such information shall be obtained in writing.

§ 18–2.303–4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late.

§ 18–2.303–5 Hand-carried bids.

A late hand-carried bid, or any other late bid not submitted by mail or telegraph, shall not be considered for award.

§ 18–2.303–6 Notification to late bidders.

Where a late bid is received and it is clear from available information that under § 18–2.303–2 such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered. However, where a late bid is transmitted by registered mail and received before award but it is not clear from available information whether the bid can be considered, or in any case of a late bid transmitted by certified mail received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids No. ---------, dated ----------, was received after the time for opening specified in the Invitation. Accordingly your bid will not be considered for award unless (1) there is received from you by ---------- clear and convincing evidence from the post office station of mailing which establishes the date (and time, if possible) that the bid was deposited with that station and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence from such station of its closing time or written verification by such station of an approved time entry on the receipt is also acceptable.

(Date)

(March 1964)

The foregoing notification shall be appropriately modified in the case of late telegraphic bids.

§ 18–2.303–7 Disposition of late bids.

A late bid which is not considered for award shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder. However, an unidentified late bid may be opened solely for identification purposes, but it shall be resealed immediately and no information contained therein disclosed. Opening under these circumstances shall be accomplished only by a contracting officer who shall write on the envelope, after resealing, an adequate explanation of the action, the date and time opened, and his signature.

§ 18–2.303–8 Records.

The following shall, if available, be included in the files of the procurement office with respect to each late bid:

(a) A statement of the date and hour of mailing or filing;

(b) A statement of the date and hour of receipt;

(c) The determination whether the late bid was considered, with supporting facts;

(d) A statement of the disposition of the late bid; and

(e) The envelope, or other covering, if the late bid was considered for award.

§ 18–2.303–9 Inconsistencies in standard forms.

Pending the revision of Standard Form 22, Instructions to Bidders (Construction Contracts), January 1961 edition; Standard Form 30, Invitation and Bid (Supply Contract), October 1957 edition; and Standard Form 33, Invitation, Bid, and Award (Supply Contract), October 1957 edition; this § 18–2.203 shall govern to the extent that the provisions of these forms are inconsistent with this section and the provisions set forth in § 18–2.201(a)(18) shall be included to satisfy the requirements of this § 18–2.303.

§ 18–2.304 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received prior to the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office prior to the time fixed for opening of bids shall be considered if such message is confirmed by the telegraph company with a written telegram. Modifications received by telegram shall be sealed in an envelope and no information contained therein shall be disclosed prior to the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or his authorized representative: *Provided,* His identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

§ 18–2.305 Late modifications and withdrawals.

(a) Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be subject to the rules applicable to late bids set forth in § 18–2.303. However, a modification received from an otherwise successful bidder which is favorable to the Government and which would not be prejudicial to other bidders shall be considered at any time that such modification is received.

(b) Where a late modification or late withdrawal is received and it is clear from available information that under paragraph (a) of this section such late modification or late withdrawal cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his modification or withdrawal was received late and will not be considered. However, where a late modification or late withdrawal is transmitted by registered mail and received before award but it is not clear from available information whether the modification or withdrawal can be considered, or in any case of a late modification or withdrawal transmitted by certified mail and received before award, the bidder shall be promptly notified substantially as follows:

Your (modification) (request for withdrawal) or your bid in response to Invitation for Bids No. ---------, dated ----------, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless (1) there is received from you by ---------- clear and convincing evidence from the post office of mailing which establishes the date (and hour, if possible) and the (modification) (request for withdrawal) was deposited with that post office, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence of the time of closing of that station is also acceptable.

(Date)

(June 1963)

The foregoing notification shall be appropriately modified in the case of late telegraphic modifications or withdrawals.

(c) Late modifications or late withdrawals, which are not considered as being effective, shall be held unopened until after award and then returned to

the bidder, unless other disposition is requested or agreed to by the bidder, except that:

(1) An unidentified modification or request for withdrawal may be opened solely for purposes of identification, as provided in § 18.2.401; and

(2) Any modification received from an otherwise successful bidder shall be opened, so as to determine whether it should be considered as stated in the proviso in paragraph (a) of this section.

(d) Records of late modifications and late withdrawals shall be maintained in accordance with the record requirements for late bids set forth in § 18–2.303–8.

(e) Pending the revision of Standard Form 22, Instructions to Bidders (Construction Contract), January 1961 edition; Standard Form 30, Invitation and Bid (Supply Contract), October 1957 edition; and Standard Form 33 Invitation, Bid, and Award (Supply Contract), October 1957 edition; this § 18–2.305 shall govern to the extent that the provisions of these forms are inconsistent with this § 18–2.305 and the provision set forth in § 18–2.201(a)(18) shall be included to satisfy the requirements of this § 18–2.305.

Subpart 18–2.4—Opening of Bids and Award of Contract

§ 18–2.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received prior to the time of opening shall be kept unopened except as stated in paragraph (b) of this section, and secured in a locked bid box or other locked receptacle. Until the bid opening, information concerning the identity and number of bids received shall be made available only to Government employees who have a proper need for such information. When bid samples are submitted with bids, they shall be handled with the same degree of care as the bids; i.e., they shall be handled to prevent disclosure of characteristics before bid opening.

(b) Prior to bid opening, unidentified bids may be opened solely for the purpose of identification and then only by a contracting officer or a representative specifically authorized by a contracting officer to open bids. When such a representative is designated, the contracting officer shall nevertheless remain responsible for action taken. If a sealed bid is opened by mistake, the person who opens the bid shall immediately write his signature and position on the envelope and deliver it to the contracting officer, who shall immediately write on the envelope an explanation for the opening, the date and time opened, the invitation for bid number, and his signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to bid opening time.

§ 18–2.402 Opening of bids.

(a) Only NASA contracting officers or representatives specifically authorized by them to open bids shall act as bid opening officers. The bid opening officer shall decide when the time specified for bid opening has arrived and shall so declare to those present. All bids received prior to the time specified for receipt shall then be publicly opened, and, when practicable, read aloud to the persons present and recorded. If it is impracticable to read the entire bid, as where many items are involved, the total amount bid shall be read, if feasible. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required by § 18–2.403 has been made and its accuracy verified.

(b) Access to the bid opening where a classified procurement is involved shall not be afforded the general public, and no public record shall be made of the bid price. However, the bid opening may be witnessed, and the results recorded, by properly cleared representatives of suppliers, if the suppliers concerned were invited to bid on the invitation.

(c) Examination of unclassified bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. Normally, original bids shall not be allowed to pass out of the hands of a Government official. However, in special cases where duplicate copies of unclassified bids are not available, the original unclassified bids may be examined by the public if under the immediate supervision of a Government official and then only under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bids. These policies are subject to the prohibition in § 18–2.404–4 with respect to public disclosure of descriptive literature or material submitted by a bidder on a restrictive basis.

§ 18–2.403 Recording of bids.

The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation shall be entered in an abstract or record which, except in the case of a classified procurement, shall be available for public inspection. The abstract shall set forth all qualifications to the invitation made by bidders and included in their bids. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The record or abstract shall be completed as soon as practicable after the bids have been opened and read. The contracting officer or his designee (other than the bid opening officer) shall review the record or abstract for accuracy and shall indicate his concurrence thereon. If the invitation for bids is canceled before the time set for bid opening, this fact shall be recorded, together with a statement of the number of concerns invited to bid and the number of bids received.

§ 18–2.404 Rejection of bids.

§ 18–2.404–1 Cancellation of invitation after opening.

(a) The preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices. As a general rule, after opening, an invitation for bids should not be canceled and readvertised due solely to increased requirements for the items being procured; award should be made on the initial invitation for bids and the additional quantity should be treated as a new procurement.

(b) Invitations for bids may be canceled after opening but prior to award where such action is consistent with paragraph (a) of this section and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following:

(1) Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids;

(2) The supplies or services being procured are no longer required;

(3) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidder's plant.

(4) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited;

(5) All otherwise acceptable bids received are at unreasonable prices; or

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. (Reports of possible violation of antitrust laws must be made by NASA Headquarters to the Attorney General.)

Determinations to cancel invitations for bids shall state the reasons therefor.

(c) Should administrative difficulties be encountered after bid opening which will delay award beyond bidders' acceptance periods, extension of the several lowest responsible bidders' bid acceptance periods shall be requested before the expiration thereof, in order to avoid, when possible, the need for readvertisement.

§ 18–2.404–2 Rejection of individual bids.

(a) Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, or permissible alternates thereto, shall be rejected as nonresponsive.

(b) Ordinarily, a bid shall be rejected where the bidder imposes conditions which would modify requirements of the invitation for bids or limit his liability to the Government so as to give him an

advantage over other bidders. For example, bids shall be rejected in which the bidder:

(1) Attempts to protect himself against future changes in conditions, such as increased costs if total price to the Government cannot be determined for bid evaluation;

(2) Fails to state a price and, in lieu thereof, states that price shall be "price in effect at time of delivery";

(3) States a price but qualifies such price as being subject to "price in effect at time of delivery";

(4) Conditions or qualifies his bid by stipulating that the bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement; or

(5) Limits rights of Government under any contract clause. However, a low bidder may be requested to delete objectionable conditions from his bid if these conditions do not go to the substance as distinguished from the form, of the bid. A condition goes to the substance of a bid when it affects price, quantity, quality, or delivery of the items offered.

(c) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(d) Bids received from any person or concern debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired (see Subpart 18–1.6 of this chapter).

(e) Low bids received from concerns determined to be not responsible shall be rejected.

(f) Where an invitation for bids requires that bids be supported by a bid guarantee, noncompliance with such requirement will require rejection of the bid, except that rejection of the bid is not required in these situations:

(1) Where only a single bid is received (in such cases the Government may or may not require the furnishing of the bid guarantee before award);

(2) Where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid;

(3) Where the bid guarantee is received late and the late receipt may be waived under the rules established in § 18–2.303 for consideration of late bids; and

(4) Where an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid under § 18–2.406, if the bidder will increase the amount of the bid guarantee in proportion to the authorized bid correction.

(g) The originals of all rejected bids and any written findings with respect to such rejections shall be preserved with the papers relating to the procurement.

§ 18–2.404–3 Notice to bidders of rejection of all bids.

When the contracting officer determines to reject all bids, each bidder shall be notified that all bids have been rejected and the reason for such action.

§ 18–2.404–4 Restrictions on disclosure of descriptive literature.

When a bid is accompanied by descriptive literature or material which is submitted with a restriction that the literature or material is to be used only for evaluating the bid and is not to be disclosed publicly, such restriction shall not render the bid nonresponsive if (a) the restriction does not prevent public disclosure of those elements of the bid which relate to quantity, price, discount, and delivery, and (b) the literature or material does not vary the terms of the invitation for bids. Descriptive literature and material so restricted shall be used in accordance with the policy set forth in § 18–2.202–5 only to evaluate bids and shall not be disclosed outside the Government in a manner which would contravene the restriction, without the written permission of the bidder.

§ 18–2.404–5 All or none qualification.

Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualification is substantive and affects the rights of other bidders.

§ 18–2.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one which is merely a matter of form, or is some immaterial variation from the exact requirements of the invitation for bids, not affecting the price, quality, quantity, or delivery of the supplies or performance of the services being procured, the correction or waiver of which would not be prejudicial to other bidders. The contracting officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or shall waive such deficiency where this is to the advantage of the Government. Examples of minor informalities or irregularities include:

(a) Failure of bidder to return the number of copies of signed bids required by the invitation for bids;

(b) Failure to furnish required information concerning the number of bidder's employees;

(c) Failure of bidder to sign his bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as a bid guarantee, or a letter signed by the bidder referring to and clearly identifying the bid itself. Where a firm submitting a bid has formally adopted or authorized, before the date of opening of bids, the execution of documents by typewritten, printed, or rubber-stamped signature and submits evidence of such authorization and the bid carries such a signature, it shall be regarded as duly signed;

(d) Failure of a bidder to acknowledge receipt of an amendment to invitations for bids, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bids and the bidder submitted a bid thereon; or

(2) The amendment clearly would have no effect on price, quality, quantity, or delivery, such as an amendment correcting a typographical mistake in the name of the NASA installation.

§ 18–2.406 Mistakes in bids.

§ 18–2.406–1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this § 18–2.406. Such actions shall be taken prior to award.

§ 18–2.406–2 Apparent clerical mistakes.

Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if he has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are obvious misplacement of a decimal point; obvious incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price FOB destination and the price FOB factory; an obvious mistake in designation of unit. Correction shall be reflected in the award document.

§ 18–2.406–3 Other mistakes disclosed before award.

(a) In lieu of submission to the General Accounting Office for decision, the Comptroller General, by Decision B–140233, has granted to NASA the authority to make the administrative determinations set forth in subparagraphs (1) through (4) of this paragraph in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award.

(1) Where the bidder requests permission to withdraw a bid, and clear and convincing evidence establishes the existence of a mistake, a written determination permitting withdrawal of the bid may be made.

(2) Where the bidder requests permission to correct a mistake in his bid, and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a written determination permitting the correction of the mistake may be made: *Provided*, That in the event such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and bid actually intended are ascertainable substantially from the invitation and the bid itself. If the evidence is

clear and convincing only as to the mistake, but not as to the intended bid, a written determination permitting withdrawal of the bid may be made.

(3) Where the evidence is not clear and convincing that the bid as submitted was not the bid intended, a written determination requiring that the bid be considered for award in the form submitted may be made.

(4) In cases where a mistake other than an apparent mistake is suspected or is otherwise brought to the attention of the contracting officer, he shall obtain from the bidder, prior to award, either a verification of the bid or evidence in support of the mistake. If the bidder verifies the bid, or fails or refuses to furnish evidence in support of a suspected or alleged mistake, no administrative determination shall be necessary, and the contracting officer shall consider the bid for award in the form submitted.

(b) Mistakes in bid cases covered by paragraph (a) (1), (2), or (3) of this section shall be referred by the contracting officer to the Office of Procurement (Code KDG) for determination. If the time for acceptance of the bids may expire before a determination can be made, arrangements shall be made by the contracting officer to extend the time for acceptance. Referrals of cases involving mistakes in bids to the Office of Procurement shall include the following data:

(1) A signed copy of the bid involved;

(2) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake;

(3) An abstract or record of the bids received;

(4) A written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence (such as work sheets or other data used in preparing the bid) of the existence of the mistake and the manner in which it occurred, and, if modification is sought, supporting evidence of the intended bid; and

(5) A written statement by the contracting officer (i) describing the supplies or services involved, (ii) stating the expiration date of the bid in question and of the other bids submitted, (iii) specifying how and when the mistake was alleged, (iv) summarizing the evidence submitted by the bidder, (v) submitting, in cases where only one bid was received, the most recent contract price for the supplies involved, or in the absence of a recent contract for the item, the contracting officer's estimate of a fair price for the item, and (vi) submitting any additional evidence considered pertinent. The statement shall recommend that the bid be considered for award in the form submitted, or the bidder be authorized to withdraw the bid, or the bidder be authorized to modify the bid.

Ordinarily, contracting officers should not refer mistakes in bid cases by telegraph or telephone to the Office of Procurement when the determinations set forth in paragraph (a) (2) or (3) of this section are applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing. However, when time is of the essence, the contracting officer may refer the case by telegraph or telephone.

(c) A record shall be kept of all administrative determinations made in accordance with this § 18–2.406–3, together with a complete statement of the facts of each case.

§ 18–2.406–4 Disclosure of mistakes after award.

(a) When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by supplemental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the contract. All other cases shall be referred to the Office of Procurement. They will either be decided by the Director of Procurement under paragraphs (b) and (c) of this section, be referred by the Director of Procurement to the Comptroller General, or be processed in accordance with Part 18–17 of this chapter.

(b) In lieu of submission to the General Accounting Office for decision, the Comptroller General, by Decision B–140233, dated February 3, 1961, has granted to NASA the authority to make the administrative determinations in subparagraphs (1) through (3) in connection with mistakes in bids alleged or disclosed after award.

(1) A determination may be made to rescind a contract where the original contract price does not exceed $1,000.

(2) A determination may be made to reform a contract, irrespective of amount—

(i) To delete the item or items involved in the mistake where such deletion does not reduce the contract price by more than $1,000; or

(ii) To increase the price where such increase does not exceed $1,000 and if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids.

(c) The Director of Procurement, with the advice of the Office of the General Counsel, is the NASA official authorized to make the administrative determinations described in paragraph (b) of this section. This authority may not be redelegated. Determinations may be made only on the basis of clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that the unilateral mistake made by the contractor was so apparent as to have charged the contracting officer with notice of the probability of the mistake.

(d) Mistakes disclosed after award shall be processed as follows:

(1) Whenever a mistake in bid is alleged or disclosed after award, the contracting officer shall advise the contractor to support the alleged error by written statements and by all pertinent evidence, such as the contractor's file copy of the bid, his original work sheets and other data used in preparing the bid, subcontractors' and suppliers' quotations, if any, published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) Where the contractor furnishes evidence in support of an alleged mistake, the contracting officer may either correct the mistake if authorized under paragraph (a) of this section, or refer the case to the Office of Procurement.

(3) Where a case is referred to the Office of Procurement, the file submitted shall include the following data:

(i) All evidence furnished by the contractor;

(ii) A copy of the contract, including a copy of the bid and any specifications or drawings relevant to the alleged mistake, and any change orders or supplemental agreements thereto;

(iii) An abstract or record of the bids received;

(iv) A written statement by the contracting officer setting forth—

(*a*) Specific information as to how and when the mistake was alleged or disclosed;

(*b*) A summary of the evidence submitted by the contractor;

(*c*) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(*d*) In the event that only one bid was received, a quotation of a recent contract price for the supplies or services involved, or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services, and the basis for such estimate;

(*e*) Any additional evidence considered pertinent, including copies of all relevant correspondence between the contracting officer and the contractor concerning the alleged mistake;

(*f*) The course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence and, if other than a change in contract price is recomended, the manner by which the item will otherwise be procured; and

(*g*) The status of performance and payments under the contract, including contemplated performance and payments.

(e) The Office of Procurement shall maintain a record of all administrative determinations made in accordance with this § 18–2.406–4, the facts involved, and the action taken in each case. A copy of the determination shall be attached to each copy of any contract rescission or reformation resulting therefrom.

(f) When administrative determination is precluded by the limitations set forth in paragraph (b) of this section, the matter may be considered in accordance with Part 18–17 of this chapter, or submitted to the Comptroller General for decision.

(g) Nothing contained in this § 18–2.406–4 prevents the submission by the Director of Procurement of any doubtful case to the Comptroller General. If a contractor's request for correction of an alleged mistake is denied by the Director of Procurement, the contracting officer shall so notify the contractor.

(h) Nothing contained in this § 18–2.406–4 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder or deprive any contractor of his right to have the matter determined by the Comptroller General should he so request.

§ 18–2.407 Award.

§ 18–2.407–1 General.

Unless all bids are rejected, award shall be made by the contracting officer by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. Award shall not be made until all required approvals have been obtained. Awards shall be made by mailing or delivering to the successful bidder a properly executed award document or notice of award. When a notice of award is issued, it shall be followed as soon as possible by the formal documents. When more than one contract results from any single invitation for bids, separate award documents shall be executed, each bearing its own separate number. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

§ 18–2.407–2 Responsible bidder.

Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible.

§ 18–2.407–3 Discounts.

(a) Prior to issuing an invitation for bids (other than for a construction contract), a determination shall be made as to what minimum period for prompt payment discounts will be considered in the evaluation of bids and such minimum period shall be stated in the invitation for bids. In determining the minimum period for a particular procurement, consideration shall be given to:

(1) The place of delivery, inspection, and acceptance in relation to the place of payment of invoices or vouchers;

(2) The number of days required to process invoices or vouchers from receipt through payment in the normal course of business; and

(3) The need for prolonged acceptance testing or other unusual circumstances tending to retard the normal processing of invoices or vouchers.

Generally, the minimum period will be expressed in multiples of 10 days; e.g., "10 calendar days," "20 calendar days," or "30 calendar days," since these time intervals coincide with the discount terms generally offered by industry.

(b) In determining which of several bids received is the lowest, any discount offered shall be deducted from the bid price on the assumption that the discount will be taken, unless the discount offered is for a lesser period than the minimum number of days specified in the invitation for bids. Where otherwise equal bids offer the same discount rate, the bid offering the longer discount period shall be considered as being the most advantageous to the Government. If a bid offers a prompt payment discount, but fails to specify the period in which the discount may be taken, the discount may be considered since award to the bidder gives the Government the right to deduct the discount from any payments made with reasonable promptness.

(c) If a bid offers a prompt payment discount for a period less than that specified in the invitation for bids, the discount shall not be considered in the evaluation of bids. If a bid would have been the lowest bid received if the discount offered were considered, but award is not made thereon because the offered discount cannot be considered, a notation to that effect shall be made upon the abstract or record of bids.

(d) In any case, the offered discount of the successful bidder shall form a part of the award, whether or not such discount was considered in the evaluation of his bid, and such discount shall be taken if payment is made within the discount period.

§ 18–2.407–4 Price escalation.

(a) The use of price escalation clauses shall be strictly limited in accordance with the provisions of § 18–2.104–2.

(b) Where an invitation for bids does not contain a price escalation clause, bids received which quote a price and contain a price escalation provision with a ceiling (usually expressed in terms of a maximum percentage increase) above which the price will not escalate, shall be evaluated on the maximum possible escalation of the quoted base price. Under such invitations, bids which contain escalation with no ceiling shall be rejected.

(c) Where an invitation for bids contains a price escalation clause and no bidder takes exception to the escalation provisions, bids shall be evaluated on the basis of the quoted prices without the allowable escalation being added. Where a bidder increases the maximum percentage of escalation stipulated in the invitation for bids or limits the downward escalation provisions of the invitation, the bid will be rejected as nonresponsive. Where a bidder deletes the escalation clause from his bid, the bid shall be rejected as nonresponsive since the downward escalation provisions are thereby limited. Where a bidder decreases the maximum percentage of escalation stipulated in the invitation for bids, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, if after evaluation the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

§ 18–2.407–5 Other factors to be considered.

Among other factors in addition to the price bid that may be considered in evaluating an award are the following:

(a) Foreseeable cost or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc.; and

(b) Advantages or disadvantages to the Government that might result from making multiple awards.

§ 18–2.407–6 Equal low bids.

(a) When two or more low bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and all other factors) award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives, *provided:*

(1) Subject to subparagraphs (2), (3), and (4) of this paragraph, (i) in the case of equal low bids, one of which is submitted by a small business concern, award shall be made to the small business concern, and (ii) in the case of equal low bids, two or more of which are submitted by small business concerns, award shall be made by a drawing by lots limited to the small business concerns.

(2) Where two or more equal low bids are received from small business concerns, one of which is submitted by a bidder who will perform the contract in a labor surplus area, award shall be made to the small business concern which will perform the contract in such labor surplus area.

(3) In the case of equal low bids, two or more of which are submitted by small business concerns which will perform the contract in a labor surplus area, award shall be made by a drawing by lot limited to the small business concerns in the labor surplus area.

(4) Where two or more equal low bids are received, one bid being from a business concern (whether small or not) not in a labor surplus area and the other being from a bidder who, although not a small business concern, will perform the contract in a labor surplus area, award shall be made to the latter.

(b) When award is to be made by lot and the information available shows that the product of a particular manufacturer is offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

§ 18–2.407–7 Statement of award.

Each installation shall maintain records which either state that the accepted bid was the lowest bid received or list all lower bids and set forth reasons for their rejection. Standard Form 1036 is not currently used within NASA for this purpose. The reasons shall be set forth in such detail as is necessary to justify the award. For the purpose of these records, the lowest bid received is considered to be that responsive bid which is lowest after a consideration of price factors only. The cost of transportation to the destination indicated in the invitation for bids, any acceptable discount offered by a bidder and, if the invitation so specifies, any other Government cost factor, shall be considered price factors in determining the lowest bidder for purposes of these records. In each case where an award is made after receipt of equal low bids, the record shall set forth the manner in which the tie was broken. Where an award involves a mistake in bid and the matter has been resolved by administrative action, a copy of the bidder's verification in the case of an apparent or obvious mistake or the written administrative determination concerned shall be retained in the contract file. Where an award involves a mistake in bid on which the Comptroller General has rendered a decision, the record shall contain a citation by number and date of the decision and a copy thereof shall be attached to the record.

§ 18–2.407–9 Protests against award.

(a) *General.* (1) Contracting officers shall consider all protests or objections to the award of a contract, whether received before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest.

(2) Every effort shall be made to resolve protests at the field installation. It is the responsibility of the contracting officer to decide whether a protest has a valid basis and to take appropriate action when possible without referral to NASA Headquarters. Such action may be taken only with the concurrence of local counsel and shall be followed by a written explanation to NASA Headquarters accompanied by a copy of any pertinent correspondence. However, in the following cases written protests received by the contracting officer should be referred to NASA Headquarters:

(i) The protesting party requests referral to higher authority;

(ii) The protest is known to have been lodged directly with the Comptroller General, a member of Congress, the Small Business Administration, or NASA Headquarters;

(iii) The contracting officer entertains some doubt as to proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by NASA Headquarters or the Comptroller General.

(3) In referring a protest to NASA Headquarters, a completely documented case shall be submitted to the Office of Procurement (Code KDG) including the following:

(i) The letter or other document which initiated the protest, together with all supporting evidence submitted by the person making the protest;

(ii) Relevant letters or other written statements, received from other persons or bidders affected by or involved in the protest, that set forth the facts with respect to their position in the matter, together with any additional supporting evidence;

(iii) A copy of the bid of the protesting bidder and a copy of the bid of the bidder to whom award has been made or who is being considered for award, if relevant to the protest;

(iv) A copy of the invitation for bids, including, where practicable, pertinent specifications, if relevant to the protest;

(v) A copy of the abstract of bids;

(vi) Any other documents which are relevant to the protest; and

(vii) A statement signed by the contracting officer setting forth his findings, actions, and recommendations in the matter, together with any additional information and evidence considered to be necessary in determining the validity of the protest. If the award of a contract was made pending resolution of the protest, the contracting officer's statement shall include the determination prescribed in paragraph (b)(2) of this section.

(4) Where protests are made directly to NASA Headquarters or where NASA Headquarters receives notice of protests made directly to the Comptroller General, a member of Congress, or the Small Business Administration, the contracting officer shall be requested to furnish information. This will usually require submittal of a completely documented case as prescribed in paragraph (3) above.

(5) Protests received by NASA Headquarters, in accordance with subparagraphs (2) and (4) of this paragraph, will be acted upon by the Office of Procurement. Where substantial doubt exists as to the validity of a protest, the views of the Comptroller General will be obtained.

(6) Where a protest affects another bidder, a contractor, or any other party having a legitimate interest, the contracting officer normally should give prompt notice of the protest to such parties in order that they may take appropriate action on their own behalf. The extent of information to be furnished the affected parties in any particular case will be governed by such matters as legal considerations, the interest of the Government, equitable consideration for the interests of affected parties, and mitigation of losses or other injuries to any and all parties concerned. Affected parties shall be advised that such a notice of protest in no way relieves them of any obligations, under a contract or otherwise, but is intended primarily to afford them a fair opportunity to be heard by, and to present evidence for the consideration of, the agency which will render a decision in the case.

(b) *Protests before award.* (1) If an oral protest is received before award, the contracting officer may require written confirmation by a specified time and inform the protesting party that award will be withheld until that time. If the written confirmation is not received by the specified time, the oral protest may be disregarded and award made in the normal manner, unless the contracting officer finds it necessary to take remedial action.

(2) If a written protest is received before award or if it is known before award that a protest has been made to the Comptroller General, a member of Congress, the Small Business Administration, or NASA Headquarters, award shall not be made until the matter is resolved, unless the contracting officer determines that:

(i) The items to be procured are urgently required;

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will otherwise be advantageous to the Government.

Such determination shall be referred to the Office of Procurement for approval prior to award if an unresolved protest against such award has been, or is expected to be, referred to NASA Headquarters in accordance with paragraph (a)(2) of this section, or if information on a protest is being prepared by the contracting office at the request of NASA Headquarters in accordance with paragraph (a)(4) of this section. Before proceeding with an award prior to final disposition of a protest under consideration by the Comptroller General, a notice of intent to make award, with the reasons therefor, shall be furnished the Comptroller General and formal or informal advice obtained concerning the status of the case prior to making award. In all cases where award is made under subdivision (i), (ii), or (iii) of this subparagraph, the contracting officer shall document the file to explain the need for an immediate award and shall give written notice of the decision to proceed with the award to the protesting party and any others concerned.

(3) Where an award is to be withheld pending disposition of a protest, any bidders whose bids might become eligible for award should be informed of the protest and, where appropriate, requested to extend the time for acceptance of their bids (with consent of sureties, if any) in order to avoid the need for readvertisement. Failure to obtain such an extension is a factor to be taken into account in making a determination under subparagraph (2)(iii) of this paragraph (b).

(c) *Protests after award.* The general instructions in paragraph (a) of this section are applicable to protests after award.

§ 18–2.408 Information to bidders.

(a) Where feasible, procurement offices should:

(1) Notify unsuccessful bidders promptly of the fact that their bids were not accepted; and

(2) Extend the appreciation of the procurement office for the interest the unsuccessful bidder has shown in submitting a bid.

(b) Notification to unsuccessful bidders may be accomplished either orally or in writing through the use of a form, postal card, or other appropriate means. Should an unsuccessful bidder request such information, the procurement office shall either provide him with the name and address of the successful bidder, together with the contract price, or when work load does not permit, inform him as to the location where a copy of the abstract of bids is available for inspection. In addition, when an inquiry is made by an unsuccessful bidder whose bid price was lower than the successful bidder's, sufficient information shall be furnished in the reply to the unsuccessful bidder to fully explain the basis for award. If a request is received from an inquirer who is not a bidder or a representative of a bidder, the procurement office may furnish the name of the successful bidder(s) and, if requested, the price(s) at which award(s) were made. However, where such requests require so large an amount of work as to interfere with the normal operations of the procurement office, the inquirer shall be advised where a copy of the abstract of bids may be seen. In the case of classified invitations, information regarding the name of the successful bidder and the contract price shall be furnished only to unsuccessful bidders or suppliers invited to bid, and then only upon request. No information regarding a classified opening may be furnished by telephone.

§ 18–2.409 Synopses of contract awards.

See § 18–1.1004 of this chapter.

Subpart 18–2.5—Two-Step Formal Advertising

§ 18–2.501 General.

Two-step formal advertising is a method of procurement designed to promote the maximum competition practicable when available specifications are not sufficiently definitive to permit a formally advertised procurement in accordance with Subparts 2, 3, and 4 of this Part 18–2. It is a flexible procedure and is especially useful in the procurement of complex and technical items, to prevent the elimination of potentially qualified producers from the competitve base. It is conducted in two phases. The first step consists of the request, submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and, among other things, includes engineering approach, special manufacturing processes, and special testing techniques. Also, when required to clarify basic technical requirements, other related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step. The second step consists of a formally advertised procurement, confined to those offerors who submitted an acceptable technical proposal in Step One. This method of procurement requires that the contracting officer work closely with technical personnel and rely on their specialized knowledge in determining the technical requirements of the procurement and the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of the two-step of a sufficiently descriptive statement of the Government's requirement, including the definition of a technical data package, so that subsequent procurements may be made by straight formal advertising.

§ 18–2.502 Conditions for use.

The two-step formal advertising method of procurement may be used when its use has been approved by the Procurement Officer and when all of the following conditions are present:

(a) Available specifications or purchase descriptions are not sufficiently definite or complete to permit full and free competition without engineering evaluation and any necessary discussion of the technical aspects of the requirement to ensure mutual understanding between each source and the Government;

(b) Definite criteria exist for evaluating technical proposals, such as applicable design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance; however, such criteria shall not include consideration of capacity or credit (see § 18–1.705–6 of this chapter);

(c) More than one technically qualified source is expected to be available both initially and after technical evaluation; and

(d) A firm fixed-price contract or a fixed-price contract with escalation will be used.

§ 18–2.503 Procedures.

§ 18–2.503–1 Step one.

(a) *Requests for technical proposals.* A request for technical proposals shall be distributed to qualified sources. In addition, the request shall be synopsized in accordance with Subpart 18–1.10 of this chapter. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(1) The best practicable description of the supplies or services required;

(2) Notification of the intent to conduct the procurement in two steps and the actions involved;

(3) The requirements of the technical proposal, i.e., the necessary details such as drawings, data, presentations, etc., to be submitted;

(4) The criteria for evaluating the technical proposal (§ 18–2.502(b));

(5) A statement that the technical proposals shall not include prices or pricing information;

(6) The date by which the proposal must be received and a statement substantially as follows:

LATE TECHNICAL PROPOSALS. (JANUARY 1964)

The Government reserves the right to consider technical proposals or modifications thereof received after the date specified for receipt.

(7) A statement that the Government may discuss the technical aspects of the proposal with the concern submitting the proposal;

(8) A statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for award, and that each bid in the second step must be based on the bidder's own technical proposal;

(9) A statement that sources submitting unacceptable technical proposals will be so notified upon completion of the technical evaluation; and

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When compliance with specifications permits utilization of essentially different technical approaches, it is generally in the interest of the Government to authorize the submission of multiple proposals. If multiple proposals are authorized the request shall include a statement substantially as follows:

MULTIPLE TECHNICAL PROPOSALS. (JANUARY 1964)

In the first step of this two-step procurement, offerors are authorized and encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the offeror will be notified as to its acceptability.

(b) *Receipt and evaluation of technical proposals.* The following actions shall be taken with respect to receipt and evaluation of technical proposals:

(1) Every precaution shall be taken to safeguard technical proposals against disclosure to unauthorized persons;

(2) Technical proposals submitting data marked in accordance with § 18–3.109 of this chapter will be accepted and handled in accordance with § 18–3.109 of this chapter;

(3) Any references to price or cost will be removed;

(4) Technical evaluation of the proposals will be based upon the criteria contained in the request for technical proposals and such evaluation will not include consideration of capacity or credit;

(5) Technical proposals will be categorized as acceptable or unacceptable. Proposals should not be categorized as unacceptable when a reasonable effort on the part of the Government could bring the proposals to an acceptable status and increase competition. The contracting officer shall arrange for any necessary discussions with sources submitting technical proposals for the purpose of obtaining additional information

or clarification which may be required. When, after discussion and submission of necessary information and clarification, technical proposals are determined to be acceptable, they will be so categorized. If, however, it is determined that a technical proposal is not reasonably susceptible of being made acceptable, it should be classified as unacceptable and no discussions of it need thereafter be initiated; and

(6) Upon final determination that a technical proposal is unacceptable, the contracting officer shall promptly notify the source submitting the proposal of that fact. The notice shall indicate, in general terms, the basis for such determination including a statement of whether rejection was based on failure to furnish sufficient information or on an unacceptable engineering approach.

(c) *Discontinuance.* If, as a result of the evaluation of technical proposals, it appears necessary to discontinue the two-step advertising method of procurement, the full facts and circumstances will be set forth in writing and submitted to the office which originally approved the method of procurement. If that office approves the discontinuance, each source will be notified in writing of the discontinuance and the reasons therefor.

§ 18–2.503–2 Step two.

Upon completion of Step one, a formally advertised procurement in accordance with Subparts 2, 3, and 4 of this Part 18–2 will be conducted, except that invitations for bids—

(a) Will be issued only to those sources whose technical proposals have been evaluated and determined to be acceptable under Step one;

(b) Will include the following statement:

This invitation for bids is issued pursuant to two-step formal advertising set forth in Part 2, Subpart 5, of the NASA Procurement Regulation.

Bids will be accepted and considered only from those firms who have submitted acceptable technical proposals pursuant to the first step of such procedures, as initiated by

---

(Identify the request for technical proposals)

Any bidder who has submitted multiple technical proposals in the first step of this two-step procurement may submit a separate bid covering each technical proposal which has been determined acceptable by the Government. (January 1964)

(c) Will prominently state that the supplies or services to be procured will be in accordance with the specifications and the bidder's technical proposal, as finally accepted, under the request for technical proposals. This may be accomplished in the Schedule item description by a provision substantially in the form of the following example:

Radio Antenna, in accordance with Exhibit No. ------ dated ---------- (use other description of specification as appropriate) and your Technical Proposal ---------- (insert specific identification of the bidder's proposal including any revision thereof as finally accepted) incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

(d) Will not be synopsized or publicly posted except that the names of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising will be listed in the Commerce Business Daily for benefit of prospective subcontractors in accordance with § 18–1.1003–3 of this chapter.

PART 18–3—PROCUREMENT BY NEGOTIATION

Sec.

18–3.000 Scope of part.

Subpart 18–3.1—Use of Negotiation

18–3.100 Scope of subpart.
18–3.101 General requirements for negotiation.
18–3.102 Factors to be considered in negotiated procurements.
18–3.103 Records and reports of negotiated contracts.
18–3.104 Aids to small business in negotiated procurement.
18–3.105 Aids to labor surplus area concerns in negotiated procurement.
18–3.106 Dissemination of procurement information.
18–3.106–1 Synopses of proposed procurements.
18–3.106–2 Synopses of contract awards.
18–3.106–3 Award information to unsuccessful offerors.
18–3.106–4 Disclosure of information prior to selection of contractor.
18–3.109 Restrictions on disclosure of data in proposals.
18–3.110 Solicitations for informational or planning purposes.
18–3.111 Protests against award.
18–3.112 Disclosure of mistakes after award.

Subpart 18–3.2—Circumstances Permitting Negotiation

18–3.200 Scope of subpart.
18–3.201 National emergency.
18–3.201–1 Authority.
18–3.201–2 Application.
18–3.201–3 Limitation.
18–3.202 Public exigency.
18–3.202–1 Authority.
18–3.202–2 Application.
18–3.202–3 Limitation.
18–3.203 Purchases not in excess of $2,500.
18–3.203–1 Authority.
18–3.203–2 Application.
18–3.204 Personal or professional services.
18–3.204–1 Authority.
18–3.204–2 Application.
18–3.204–3 Limitation.
18–3.205 Services of educational institutions.
18–3.205–1 Authority.
18–3.205–2 Application.
18–3.205–3 Limitation.
18–3.206 Purchases outside the United States.
18–3.206–1 Authority.
18–3.206–2 Application.
18–3.207 Medicines or medical supplies.
18–3.207–1 Authority.
18–3.207–2 Application.
18–3.207–3 Limitation.
18–3.209 Perishable or nonperishable subsistence supplies.
18–3.209–1 Authority.
18–3.210 Supplies or services for which it is impracticable to secure competition by formal advertising.
18–3.210–1 Authority.
18–3.210–2 Application.
18–3.210–3 Limitation.
18–3.211 Experimental, developmental, or research work.
18–3.211–1 Authority.
18–3.211–2 Application.
18–3.211–3 Limitation.
18–3.211–4 Reports.
18–3.212 Classified purchases.
18–3.212–1 Authority.
18–3.212–2 Application.
18–3.212–3 Limitation.
18–3.213 Technical equipment requiring standardization and interchangeability of parts.
18–3.213–1 Authority.
18–3.213–2 Application.
18–3.213–3 Limitation.
18–3.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.
18–3.214–1 Authority.
18–3.214–2 Application.
18–3.214–3 Limitation.
18–3.215 Negotiation after advertising.
18–3.215–1 Authority.
18–3.215–2 Limitation.
18–3.217 Otherwise authorized by law.
18–3.217–1 Authority.
18–3.217–2 Application.
18–3.218 Construction Work.
18–3.218–1 Application.
18–3.218–2 Limitation.
18–3.218–3 Citation of authority to negotiate.

Subpart 18–3.3—Determinations and Findings

18–3.300 Scope of subpart.
18–3.301 Nature of determinations and findings.
18–3.302 Determinations and findings to be made by the Administrator.
18–3.303 Determinations and findings to be made by the Director of Procurement.
18–3.304 Determinations and findings to be made by a contracting officer.
18–3.305 Forms of determinations and findings.
18–3.305–1 Individual contracts under 10 U.S.C. 2304 (a) (11).

Sec.
18-3.305-2 Class of contracts under 10 U.S.C. 2304(a)(11).
18-3.305-3 Individual contract under 10 U.S.C. 2304(a)(14).
18-3.306 Procedure with respect to determinations and findings.
18-3.306-1 Justification required.
18-3.306-2 Preparation and submission.
18-3.307 Filing of determinations and findings.
18-3.308 Retention of data with respect to negotiation.

Subpart 18-3.4—Types of Contracts

18-3.400 Application.
18-3.450 Incentive contracts.

Subpart 18-3.6—Small Purchases

18-3.600 Scope of subpart.
18-3.601 Purpose.
18-3.602 Policy.
18-3.603 Competition.
18-3.603-1 Solicitation.
18-3.603-2 Data to support small purchases.
18-3.604 Imprest Fund.
18-3.605 Purchase order forms.
18-3.605-1 Standard Form 44.
18-3.605-2 Standard Forms 147 and 148.
18-3.605-3 NASA Form 177.
18-3.605-4 Ship and Quote Form.
18-3.606 Blanket purchase agreement method.
18-3.606-1 General.
18-3.606-2 Establishment of blanket purchase agreement.
18-3.606-3 Conditions for use.
18-3.606-4 Fiscal control.
18-3.606-5 Further guidance.
18-3.607 Use of other NASA Forms.

Subpart 18-3.7—Negotiated Overhead Rates

18-3.700 Scope of subpart.
18-3.701 Definitions.
18-3.701-1 Negotiated final overhead rate.
18-3.701-2 Provisional overhead rate.
18-3.701-3 Overhead (indirect costs).
18-3.701-50 Negotiating authority.
18-3.702 Purpose.
18-3.703 Primary use.
18-3.704 Contract clauses.
18-3.704-1 Contracts with concerns other than educational institutions.
18-3.704-2 Contracts with educational institutions.
18-3.705 Policy.
18-3.706 Procedure.
18-3.707 Coordination.
18-3.708 Ceilings on indirect costs.

Subpart 18-3.8—Price Negotiation Policies and Techniques

18-3.800 Scope of subpart.
18-3.801 Basic policy.
18-3.801-1 General.

Sec.
18-3.801-2 Responsibility of contracting officers.
18-3.801-3 Responsibility of other personnel.
18-3.802 Preparation for negotiation.
18-3.802-1 Product or service.
18-3.802-2 Selection of sources.
18-3.802-3 Requests for proposals.
18-3.803 Type of contract.
18-3.804 Evaluation of proposals.
18-3.804-1 General.
18-3.804-2 Evaluation procedures not involving source evaluation board.
18-3.804-3 Evaluation procedures—use of source evaluation board.
18-3.804-4 Disclosure of information prior to selection of contractor.
18-3.805 Conduct of negotiations.
18-3.805-1 General.
18-3.806 Cost, profit, and price relationships.
18-3.807 Pricing techniques.
18-3.807-1 General.
18-3.807-2 Requirement for price or cost analysis.
18-3.807-3 Cost and pricing data.
18-3.807-4 Contractor and subcontractor cost or pricing data clause.
18-3.807-5 Defective cost or pricing data.
18-3.807-6 Refusal to provide cost or pricing data.
18-3.807-7 Unacceptable substitutes for pricing negotiations.
18-3.807-8 Evaluation and pricing of individual contracts.
18-3.807-9 Specified contingencies.
18-3.807-10 Subcontracting considerations in cost analysis.
18-3.808 Profit or fee.
18-3.808-1 General.
18-3.808-2 Factors for determining fee or profit.
18-3.808-4 Minimal fees or cost-sharing arrangements.
18-3.808-5 Fee limitation for experimental, developmental, or research work.
18-3.809 Audit as a pricing aid.
18-3.810 Exchange of information.
18-3.811 Record of negotiation.
18-3.813 Pre-contract planning and startup and other nonrecurring costs.
18-3.850 Initiation of the procurement request.
18-3.851 Review of the procurement request and preparation of statements of work.
18-3.852 Preparation and approval of procurement plans.
18-3.852-1 Contents of the procurement plan.
18-3.852-2 Justification for noncompetitive procurement.

Sec.
18-3.852-3 Requirement for preparation of procurement plans.
18-3.852-4 Assistance in providing for reliability assurance in procurement plans.
18-3.852-5 Approval of procurement plans.
18-3.852-6 Requests for proposals.
18-3.853 Award and preparation of the contract.
18-3.854 Release of contract award information.
18-3.854-1 General.
18-3.854-2 Definitive contracts.
18-3.854-3 Letter contracts.
18-3.854-4 Unsuccessful offerors.

Subpart 18-3.9—Subcontracting Policies and Procedures

18-3.900 Scope of subpart.
18-3.901 General.
18-3.902 "Make-or-Buy" program.
18-3.902-1 General.
18-3.902-2 Price adjustments.
18-3.902-50 Special considerations research and development contracts.
18-3.903 Review of subcontracting and contractor's purchasing systems.
18-3.903-1 Contract clauses.
18-3.903-2 Consent to subcontracts.
18-3.903-3 Approval of purchasing system.
18-3.903-4 Review of individual subcontracts.
18-3.903-50 Headquarters review of major subcontracts.

AUTHORITY: The provisions of this Part 18-3 issued under 42 U.S.C. 2473(b)(1).

§ 18-3.000 Scope of part.

This part sets forth policies and procedures to be followed in procurements by negotiation, pursuant to the provisions of sections 203(b)(5) and 301(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(b)(5) and 10 U.S.C. 2303(a)(5), respectively) and Chapter 137 of Title 10 (10 U.S.C. 2301–2313). The following policies and procedures are included:

(a) The basic requirements for the procurement of supplies and services by means of negotiation;

(b) The different circumstances under which negotiation is permitted;

(c) Determinations and findings that may be required before a contract is entered into by negotiation;

(d) Approved types of negotiated contracts and their use;

(e) Procedures for effecting purchases of not more than $2,500;

(f) Price negotiation policies and techniques; and

(g) Subcontracting policies and procedures.

Subpart 18-3.1—Use of Negotiation

§ 18-3.100 Scope of subpart.

This subpart deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

§ 18-3.101 General requirements for negotiation.

(a) Procurement shall be made by formal advertising whenever such method is feasible and practicable under the existing conditions and circumstances, even though negotiation may be authorized under Subpart 18-3.2. Among the factors to be considered in determining whether formal advertising is feasible and practicable are:

(1) The number and location of potential suppliers;

(2) The adequacy of the specifications for advertising;

(3) The nature of the items being purchased;

(4) The time available; and

(5) The type of contract contemplated.

(b) No contract shall be entered into by negotiation unless or until the following requirements have been satisfied.

(1) Formal advertising is not feasible and practicable;

(2) The contemplated procurement comes within one of the circumstances permitting negotiation set forth in 10 U.S.C. 2304(a);

(3) Any necessary determinations and findings have been made;

(4) Prescribed clearances or approvals have been obtained;

(5) The prospective contractor has been determined to be responsible; and

(6) Other requirements of this chapter have been met.

§ 18-3.102 Factors to be considered in negotiated procurements.

(a) In all negotiated procurements in excess of $2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals shall be solicited from the maximum number of qualified sources

consistent with the nature and requirements of the supplies or services to be procured. Such proposals shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and other matters deemed necessary by the contracting officer. In all such negotiated procurements, including those subject to Source Evaluation Board procedures (see § 18–3.804–3), written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered: *Provided, however,* That written or oral discussions need not be conducted for:

(1) Procurements in implementation of authorized set-aside programs; or

(2) Procurements where it can be clearly demonstrated, from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

For procurements of $2,500 or less, see Subpart 18–3.6.

(b) During the course of negotiations, contracting officers and their negotiators shall give due attention to the following and any other appropriate factors:

(1) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multi-shift and overtime costs, and any other factor relating to price, such as profits, costs of transportation, and cash discounts;

(2) Comparison of the business reputations, capabilities, and responsibilities of the respective persons or firms who submit proposals;

(3) Consideration of the quality of the supplies or services offered, or of the quantity of the same or similar supplies or services previously furnished, with particular regard to the satisfaction of technical requirements;

(4) Consideration of delivery requirements;

(5) Discriminating use of price and cost analyses;

(6) Investigation of price aspects of any important subcontract;

(7) Individual bargaining, by mail or by conference;

(8) Consideration of cost sharing;

(9) Effective utilization in general of the most desirable type of contract;

(10) Consideration of the size of the business concern;

(11) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities;

(12) Consideration as to whether the prospective supplier is located in a surplus labor area;

(13) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(14) Consideration of the extent of subcontracting;

(15) Consideration of the existing and potential workload of the prospective supplier;

(16) Consideration of broadening the industrial base by the development of additional suppliers;

(17) Consideration of whether the contractor requires Government-furnished property, machine tools, or facilities; or Government-operated test facilities; and

(18) Advantages or disadvantages to the Government that might result from making multiple awards.

§ 18–3.103 Records and reports of negotiated contracts.

See § 18–1.110 of this chapter.

§ 18–3.104 Aids to small business in negotiated procurement.

See Subpart 18–1.7 of this chapter.

§ 18–3.105 Aids to labor surplus area concerns in negotiated procurement.

See Subpart 18–1.8 of this chapter.

§ 18–3.106 Dissemination of procurement information.

§ 18–3.106–1 Synopses of proposed procurements.

Procedures with regard to synopses of proposed procurements are set forth in § 18–1.1003 of this chapter.

§ 18–3.106–2 Synopses of contract awards.

Procedures with regard to preparation of synopses of contract awards are set forth in § 18–1.1004.

§ 18–3.106–3 Award information to unsuccessful offerors.

Subject to the provisions of NASA regulations governing classified information, the following policies and procedures shall be observed in making information available to unsuccessful offerors:

(a) Except as provided in paragraph (b) of this section, and subject to the provisions of § 18–3.854, as soon as final contract action has been taken with the successful offeror, the contracting officer shall give written notice to unsuccessful offerors for procurements in excess of $10,000 that their proposals were not accepted; and

(b) In the case of procurements for which a Source Evaluation Board has been appointed, as soon as an offeror has been selected with whom to open final contract negotiations, all offerors shall be notified of this fact in writing. The time for notifying any company and the issuance of any news release shall be coordinated in advance with the Assistant Administrator for Legislative Affairs and the Assistant Administrator for Public Affairs, NASA Headquarters.

§ 18–3.106–4 Disclosure of information prior to selection of contractor.

The policies and procedures governing the disclosure of information prior to selection of a contractor are set forth in § 18–3.804–4.

§ 18–3.109 Restrictions on disclosure of data in proposals.

(a) Requests for proposals may require the offeror to submit with his proposal data which may include a design or plan for accomplishing the objectives of the procurement. Such data may include information which the offeror does not want disclosed to the public or used by the Government for any purpose other than evaluation of the proposals. Offerors shall mark each sheet of data which they so wish to restrict with the legend set forth below:

This data, furnished in response to RFP No. ---------, shall not be disclosed outside the Government or be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal *provided,* that if a contract is awarded to this offeror as a result of or in connection with the submission of such data, the Government shall have the right to duplicate, use, or disclose this data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in such data if it is obtained from another source. (DECEMBER 1962)

Contracting officers shall not refuse to consider any proposal merely because data submitted with that proposal is so marked. Data so marked shall be used only to evaluate proposals and shall not be disclosed outside the Government without the written permission of the offeror except under the conditions provided in the legend. If it is desired to duplicate, use, or disclose the data of the offeror to whom the contract is awarded, for purposes other than to evaluate the proposal, the contract should so provide.

(b) The provisions of paragraph (a) of this section do not apply to procurement by formal advertising. However, see § 18–2.404–4 of this chapter with respect to public disclosure of descriptive literature or material submitted by a bidder on a restrictive basis.

§ 18–3.110 Solicitations for informational or planning purposes.

See § 18–1.309 of this chapter.

§ 78–3.111 Protests against award.

Protests against award of negotiated procurements shall be treated substantially in accordance with § 18–2.407–9 of this chapter and will be acted upon by the Director of Procurement with the concurrence of the Office of General Counsel. However, when the selection of a contractor has been made by the Administrator, either after proceedings of a Source Evaluation Board or otherwise, the final action will be directed by the Administrator.

§ 18–3.112 Disclosure of mistakes after award.

When a mistake in a contractor's proposal is not discovered until after award, the authority to correct mistakes contained in § 18–2.406–4 of this chapter may be utilized in accordance with the limitations and procedure set forth therein.

Subpart 18–3.2—Circumstances Permitting Negotiation

§ 18–3.200 Scope of subpart.

Subject to the limitations prescribed in Subpart 18–3.1 and pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions contained in 10 U.S.C. 2304(a)(1) through (17) set forth and discussed in this Subpart 18–3.2.

§ 18–3.201 National emergency.

§ 18–3.201–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(1), purchases and contracts may be negotiated if:

it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President.

§ 18–3.201–2 Application.

For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, the Administrator, by NASA Management Instruction 3–3–12, has determined that it is necessary in the public interest to negotiate purchases and contracts without formal advertising during the period of the national emergency if they fall within one of the following three categories:

(a) Procurements made in furtherance of the policy of encouraging the placing of contracts in labor surplus areas as enunciated in current Defense Manpower Policy No. 4;

(b) Procurement made in furtherance of the NASA Small Business Program after a unilateral determination by the contracting officer to set aside all or a part of the procurement for the exclusive participation of small business concerns; or

(c) Procurement of the unawarded portion of the total requirement set aside for small business concerns when no other negotiating authority is appropriate.

§ 18–3.201–3 Limitation.

(a) This authority shall not be used when negotiation is authorized by the provisions of § 18–3.206.

(b) Each procurement negotiated pursuant to the determination referred to in § 18–3.201–2 shall be supported by a memorandum for the contract file, signed by the contracting officer, specifying the pertinent provision of the determination used as authority for negotiating the contract.

§ 18–3.202 Public exigency.

§ 18–3.202–1 Authority.

Pursuant to the authority of 10 U.S.C. 2304(a)(2), purchases and contracts may be negotiated if:

the public exigency will not permit the delay incident to advertising.

§ 18–3.202–2 Application.

This authority may be used only where the need is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that time by means of formal advertising. This authority may be used in appropriate cases even though the urgency could or should have been foreseen. Examples of situations where this authority could be invoked are:

(a) Supplies or services needed at once because of a fire, explosion, or other disaster; and

(b) The breakdown of a piece of operating machinery or equipment requiring immediate repair or replacement in order that a critical research program will not be delayed.

§ 18–3.202–3 Limitation.

Every contract negotiated under this authority shall be accompanied with a determination and findings signed by the contracting officer justifying its use, which shall become part of the contract file. The findings shall set forth those facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable. The authority of 10 U.S.C. 2304(a)(2) shall not be used if negotiation is authorized under 10 U.S.C. 2304(a)(3) or 2304(a)(6).

§ 18–3.203 Purchases not in excess of $2,500.

§ 18–3.203–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(3), purchases and contracts may be negotiated if:

the aggregate amount involved is not more than $2,500.

§ 18–3.203–2 Application.

Contracts or purchases aggregating $2,500 or less shall be made under this authority rather than under any other authority for negotiation which might otherwise be applicable, except that this authority shall not be used where 10 U.S.C. 2304(a)(6) is applicable. In arriving at the "aggregate amount involved" there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Purchases or contracts aggregating more than $2,500 shall not be broken down into several purchases or contracts of less than $2,500. (However, see § 18–3.606 for guidance in connection with the use of blanket purchase orders.)

§ 18–3.204 Personal or professional services.

§ 18–3.204–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(4), purchases and contracts may be negotiated if:

for personal or professional services.

§ 18–3.204–2 Application.

(a) This authority shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person (not by a concern); if professional services, they may be performed either by an individual contractor in person or a concern;

(2) The services are of a professional nature or are to be performed under Government supervision and paid for on a time basis; and

(3) Procurement of the services is authorized by law and is effected in accordance with the requirements of any such law.

(b) Under section 203(b)(9) of the National Aeronautics and Space Act of 1958 (42 USC 2473(b)(9)), NASA is authorized:

to obtain services as authorized by 5 U.S.C. 55a, at rates not to exceed $100 per diem for individuals.

5 U.S.C. 55a, in turn, provides authority to procure:

the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract * * *.

§ 18–3.204–3 Limitation.

For NASA policy with respect to outside experts or consultants, see NASA Management Instructions 17–3–16.1 and 17–3–16.2A. Any contract for personal services requires prior approval of the Director of Procurement. (See Subpart 18–50.1 of this chapter.)

§ 18–3.205 Services of educational institutions.

§ 18–3.205–1 Authority.

Pursuant to the authority of 10 U.S.C. 2304(a)(5), purchases and contracts may be negotiated if:

for any service to be rendered by any university, college, or other educational institution.

§ 18–3.205–2 Application.

The following are illustrative of circumstances with respect to which this authority may be used:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith;

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith; and

(c) Analyses, studies, or reports (statistical or otherwise) to be conducted by any university, college, or other educational institution.

§ 18–3.205–3 Limitation.

This authority shall not be used when negotiation is authorized by the provisions of §§ 18–3.203 and 18–3.206.

§ 18–3.206 Purchases outside the United States.

§ 18–3.206–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(6), purchases and contracts may be negotiated if:

for property or services to be procured and used outside the United States, its possessions, and Puerto Rico.

§ 18–3.206–2 Application.

This authority shall be used only for the procurement of property or services which are actually purchased from sources outside, and used outside, the United States, its possessions, and Puerto Rico (irrespective of the place of negotiation or execution of the contract), such as property or services (including construction) for overseas installations or for the use of overseas personnel. When this authority is available for the negotiation of a contract, no other negotiating authority shall be used.

§ 18–3.207 Medicines or medical supplies.

§ 18–3.207–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(7), purchases and contracts may be negotiated if:

for medicine or medical supplies.

§ 18–3.207–2 Application.

This authority shall be used only when the following two requirements have been satisfied:

(a) Such supplies are peculiar to the field of medicine, including technical equipment such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but not including prosthetic equipment; and

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services under this authority for more than $10,000.

§ 18–3.207–3 Limitation.

Every contract negotiated under this authority shall be accompanied with a determination and findings, signed by the contracting officer, justifying its use, which shall become part of the contract file. The findings shall set forth those facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable. This authority shall not be used when negotiation is authorized by the provisions of § 18–3.203 or § 18–3.206.

§ 18–3.209 Perishable or nonperishable subsistence supplies.

§ 18–3.209–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(9), purchases and contracts may be negotiated if:

for perishable or nonperishable subsistence supplies.

§ 18–3.210 Supplies or services for which it is impracticable to secure competition by formal advertising.

§ 18–3.210–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(10), purchases and contracts may be negotiated if:

for property or services for which it is impracticable to obtain competition.

§ 18–3.210–2 Application.

The following are illustrative of circumstances with respect to which this authority may be used:

(a) When supplies or services can be obtained from only one person or firm ("sole source of supply");

(b) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances;

(c) When bids have been solicited pursuant to the requirements of formal advertising, and no responsive bid has been received from a responsible bidder;

(d) When bids have been solicited pursuant to the requirements of formal advertising, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids;

(e) When the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services;

(f) When the contemplated procurement is for training film, motion picture productions, or manuscripts;

(g) When the contemplated procurement is for technical, nonpersonal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical specialized nature;

(h) When the contemplated procurement is for studies or surveys other than those which may be negotiated under § 18–3.205 or § 18–3.211;

(i) When the contemplated procurement involves maintenance, repair, alterations, or inspection, in connection with any one of which types of services the exact nature or amount of the work is not known;

(j) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal solicitation of bids;

(k) When the contemplated procurement is for commercial ocean or air transportation, including time charters, space charters, and voyage charters over trade routes not covered by common carriers (as to which, negotiation is authorized under the provisions of § 18–3.217 and section 321 of the Transportation Act of September 18, 1940, 49 U.S.C. 65), and including services for the operation of Government-owned vessels or aircraft;

(l) When the contract is for services related to the procurement of perishable subsistence such as protective storage, icing, processing, packaging, handling, and transportation, whenever it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence;

(m) When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services;

(n) When the contract is for storage (and related services) of household goods; or

(o) When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

§ 18–3.210–3 Limitation.

Every contract that is negotiated under this authority shall be accompanied with a determination and findings signed by the contracting officer justifying its use, which shall become part of the contract file. The findings shall set forth those facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable. This authority shall not be used when negotiation is authorized by any other authority set forth in §§ 18–3.201 through 18–3.217, except that this authority shall be used in preference to § 18–3.212.

§ 18–3.211 Experimental, developmental, or research work.

§ 18–3.211–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(11), purchases and contracts may be negotiated if:

for property or services that he [the Administrator] determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research.

§ 18–3.211–2 Application.

The following are illustrative of procurements with respect to which this authority may be used:

(a) Contracts relating to theoretical analysis, exploratory studies, and experiment in any field of science or technology;

(b) Developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(c) Contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, development, research, or test; or

(d) Contracts for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

§ 18–3.211–3 Limitation.

(a) This authority shall not be used for negotiated contracts with educational institutions where the authority provided by 10 U.S.C. 2304(a)(5) is applicable.

(b) This authority shall not be used for quantity production, except that such quantities may be purchased hereunder as are necessary to permit complete and adequate experiment, development, research, or test. Accordingly, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production.

(c) This authority shall not be used when negotiation is authorized by the provisions of § 18–3.203 or § 18–3.206.

(d) In order for this authority to be used, the required determination must be made in accordance with the requirements of Subpart 18–3.3. Where property or supplies are procured under this authority, the findings required by Subpart 18–3.3 shall set forth those facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable.

§ 18–3.211–4 Reports.

For implementation of the statutory reporting requirement to Congress, see § 18–1.110 of this chapter.

§ 18–3.212 Classified purchases.

§ 18–3.212–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(12), purchases and contracts may be negotiated if:

for property or services whose procurement he [the Administrator] determines should not be publicly disclosed because of their character, ingredients, or components.

§ 18–3.212–2 Application.

This authority may be used for purchases or contracts classified "Confidential" or higher.

§ 18–3.212–3 Limitation.

In order for this authority to be used, the required determination and findings must be made in accordance with the requirements of Subpart 18–3.3. The determination and findings shall set forth those facts and circumstances that are clearly illustrative of the conditions described for use of this authority. The determination and findings shall also set forth those facts and circumstances that clearly and convincingly establish that formal advertising would not be feasible and practicable. This authority shall not be used when negotiation is authorized by any other authority set forth in §§ 18–3.201 through 18–3.217.

§ 18–3.213 Technical equipment requiring standardization and interchangeability of parts.

§ 18–3.213–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(13), purchases and contracts may be negotiated if:

for equipment that he [the Administrator] determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability.

§ 18–3.213–2 Application.

(a) This authority may be used for procuring additional units and replacement items of technical equipment and spare parts by negotiation in order to assure standardization of equipment and interchangeability of parts where, in special situations or in particular localities, such standardization and interchangeability are determined necessary. For example, this authority could be utilized whenever it is necessary:

(1) To limit the variety and quantity of spare parts that must be carried in stock;

(2) To make possible, by standardization, the availability of spare parts that may be interchanged among items of damaged or worn equipment; or

(3) To procure from selected suppliers technical equipment which is available from a number of suppliers, but which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

(b) Before making a determination to procure specified makes and models under this authority, consideration shall be given to:

(1) The practicability of interchanging parts and cannibalizing equipment;

(2) The probability that future procurement of the selected item of equipment can be effected at reasonable prices;

(3) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock;

(4) The value of similar equipment and its supporting parts on hand;

(5) Possible savings in training personnel and publishing technical literature;

(6) Whether the standardization will adversely affect existing specifications and standards; and

(7) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model now in the supply system.

(c) Actions taken under this authority shall be reviewed at least once every two years to determine whether the standardization should be continued, revised, or canceled.

(d) This authority may be used in situations where only one or a limited quantity of a particular item is to be purchased and where compatibility with existing equipment and interchangeability of parts is essential. The fact that this authority is used in such a case does not mean that a subsequent purchase of similar equipment will necessarily require the use of negotiation for purposes of standardization. The facts involved in each such case must be examined to determine whether compatibility with other equipment and interchangeability of parts are essential objectives.

§ 18–3.213–3 Limitation.

This authority shall not be used for initial procurements of equipment and spare parts, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless the Administrator has determined, in accordance with the requirements of Subpart 18–3.3 that:

(a) The equipment constitutes technical equipment;

(b) Standardization of such equipment and interchangeability of its parts are necessary in the public interest; and

(c) Procurement of such equipment or of its parts by negotiation is necessary to assure that standardization and interchangeability.

§ 18–3.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

§ 18–3.214–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(14), purchases and contracts may be negotiated if:

for technical or special property that he [the Administrator] determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property.

§ 18–3.214–2 Application.

This authority may be used for the procurement of technical or specialized supplies or equipment or major components thereof, and any supplies of a technical or specialized nature which may be necessary for the use or operation of such supplies or equipment. Such procurement generally involves:

(a) High starting costs which already have been paid for by the Government or by the supplier;

(b) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(c) Elaborate special tooling already acquired;

(d) Substantial time and effort already expended in developing a prototype or an initial production model; and

(e) Important design changes which will continue to be developed by the supplier.

In general, this authority shall be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling, and equipment. However, this exception should not be used to avoid duplication of private investment unless this

duplication would be likely to result in additional cost to the Government or would result in duplication of necessary preparation which would unduly delay the procurement.

§ 18–3.214–3 Limitation.

This authority shall not be used unless and until the Administrator has determined, in accordance with the requirements of Subpart 18–3.3, that:

(a) The supplies are of a technical or specialized nature requiring a substantial investment or an extended period of preparation for manufacture; and

(b) Procurement by formal advertising either—

(1) Would be likely to result in additional cost to the Government by reason of duplication of investment; or

(2) Would result in duplication of necessary preparation which would unduly delay procurement.

§ 18–3.215 Negotiation after advertising.

§ 18–3.215–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(15), purchases and contracts may be negotiated if:

for property or services for which he [the Administrator] determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (i) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (ii) the negotiated price is lower than the lowest rejected bid of any reasonable bidder, as determined by the head of the agency; and (iii) the negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 18–3.215–2 Limitation.

This authority shall not be used unless the Administrator has determined, in accordance with the requirements of Subpart 18–3.3, that the bid prices, after formal advertising for such supplies or services, are unreasonable or were not independently reached in open competition. Also, after such determination by the Administrator and after rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by a contracting officer to each responsible bidder who submitted a bid in response to the invitation for bids;

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Administrator; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

Moreover, any evidence of bids not independently reached shall be forwarded to the Department of Justice (see § 18–1.111 of this chapter).

§ 18–3.217 Otherwise authorized by law.

§ 18–3.217–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(17), purchases and contracts may be negotiated if:

otherwise authorized by law.

§ 18–3.217–2 Application.

The following are examples of other statutes which authorize negotiation:

(a) *Small Business Act (Public Law 85–536 as amended—15 U.S.C. 631–647).* Contracts for partial or total set-asides for small business made pursuant to a joint determination by the NASA and Small Business Administration (including contracts entered into pursuant to "Small Business Restricted Advertising") shall cite as authority 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act (15 U.S.C. 642).

(b) *Section 321 of the Transportation Act of 1940 (49 U.S.C. 65).* This law permits negotiation for transportation services when the services required can be procured from any common carrier.

§ 18–3.218 Construction work.

§ 18–3.218–1 Application.

Contracts to construct or repair any building, road, sidewalk, sewer, main, or similar item are subject to 10 U.S.C. 2304(c).

§ 18–3.218–2 Limitation.

(a) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not be negotiated unless authorized pursuant to 10 U.S.C. 2304(a)(1), (2), (3), (10), (11), or (15).

(b) *Work outside of the United States.* Contracts for construction work to be performed outside of the United States shall be formally advertised and may not be negotiated unless authorized pursuant to subsections (1) through (17) of 10 U.S.C. 2304(a), as appropriate (note that such contracts to be performed in possessions of the United States or Puerto Rico may not be negotiated pursuant to 10 U.S.C. 2304(a)(6)).

§ 18–3.218–3 Citation of authority to negotiate.

Negotiated contracts for construction work shall cite as authority for their negotiation the applicable subsection of 10 U.S.C. 2304(a).

Subpart 18–3.3—Determinations and Findings

§ 18–3.300 Scope of subpart.

This subpart enumerates the procedures to be followed in making the determinations and findings referred to in 10 U.S.C. 2304(a) and Subpart 18–3.2.

§ 18–3.301 Nature of determinations and findings.

(a) Determinations and findings required in connection with negotiated contracts fall into three categories, based on the official authorized to make such determinations and findings:

(1) Those which the Administrator or Deputy Administrator of NASA must make;

(2) Those to be made by the Director of Procurement; and

(3) Those which may be made by a contracting officer.

The determinations and findings which fall into each of the above categories are listed in §§ 18–3.302, 18–3.303, and 18–3.304.

(b) Determinations and findings ordinarily will be made only with respect to individual purchases or contracts. However, in special cases, based on the recommendation of the head of a field installation and with the concurrence of the Director of Procurement, the Administrator may make determinations and findings for classes of purchases or contracts. Class determinations and findings shall be restricted to circumstances where greater operational flexibility in the processing of determinations and findings is necessary to minimize delays to a research and development project or program where several negotiated contracts may be issued in furtherance of the project or program. Before negotiating a contract under the authority of a class determination and findings, for procurements under 10 U.S.C. 2304(a)(11) for property and supplies, and for any procurements under 10 U.S.C. 2304(a)(12), the contracting officer shall establish that procurement by formal advertising is not feasible and practical (see § 18–3.101(b)). Each class determination and findings shall specify an effective period, which shall not exceed one year.

§ 18–3.302 Determinations and findings to be made by the Administrator.

The following determinations (or similar approvals) and written findings in support thereof are required to be made by the Administrator or Deputy Administrator:

(a) The determinations required by 10 U.S.C. 2304(a)(1) and (11) through (16) except that determinations under Section 2304(a)(11) with respect to contracts requiring the expenditure of not more than $100,000 may be made by the contracting officer (see § 18–3.304);

(b) Within the limitations imposed by 10 U.S.C. 2306(d), approval of fixed fees in excess of—

(1) 10 percent of the estimated cost, exclusive of fee, of any cost-plus-fixed-fee contract for experimental, developmental, or research work; or

(2) 7 percent of the estimated cost, exclusive of fee, of any other cost-plus-fixed-fee contract.

(c) The determinations required under 10 U.S.C. 2306(f) with respect to waiving the requirement for submission by contractors and subcontractors of cost and pricing data and the certification thereof; and

(d) Determinations and findings for classes of purchases or contracts.

§ 18–3.303 Determinations and findings to be made by the Director of Procurement.

The following individual determinations (or similar approvals) and written findings in support thereof are author-

ized to be made by the Director of Procurement:

(a) Determinations with respect to advance payments as required by 10 U.S.C. 2307(c) and 2310(b); and

(b) Any other determinations and findings not required to be made by higher authority.

§ 18–3.304 Determinations and findings to be made by a contracting officer.

The following individual determinations and findings may be made by a contracting officer, subject to any limitations imposed by the designating official:

(a) Determinations and findings under 10 U.S.C. 2304(a)(11) with respect to contracts requiring the expenditure of not more than $100,000;

(b) Determinations and findings justifying negotiations on the basis of public exigency under 10 U.S.C. 2304(a)(2) as required by § 18–3.202–3.

(c) Determinations and findings justifying negotiation under 10 U.S.C. 2304(a)(7) as required by § 18–3.207–3.

(d) Determinations and findings required by 10 U.S.C. 2306(c) prior to the making of any cost, cost-plus-fixed-fee, or incentive contract shall set forth those facts and circumstances that clearly indicate why the type of contract selected is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

(e) Determinations and findings required by 10 U.S.C. 2306(d) of the estimated costs of contracts or projects on the basis of which maximum allowable fee percentages are measured;

(f) Determinations and findings required by 10 U.S.C. 2306(f) with respect to significant sums by which contracts may be adjusted; and

(g) Any other determinations and findings called for by this chapter and not required to be made by higher authority.

§ 18–3.305 Forms of determinations and findings.

Each determination and findings authorizing negotiation under the authority of 10 U.S.C. 2304(a)(11)–(15) shall set forth the facts and circumstances that are clearly illustrative of the conditions described for use of the particular authority. Determinations and findings authorizing negotiation shall set forth those facts and circumstances that clearly and convincingly establish that formal advertising would not be feasible and practicable. Instructions for the preparation of determinations and findings and sample determinations and findings under 10 U.S.C. 2304(a)(11) and 10 U.S.C. 2304(a)(14) are set forth in this § 18–3.305.

§ 18–3.305–1 Individual contracts under 10 U.S.C. 2304(a)(11). (See §§ 18–3.211 and 18–3.301(b).)

(a) *Findings.* In the first paragraph under "Findings" describe briefly and clearly the scope and nature of the work to be performed. In the second paragraph, set forth the facts and circumstances that are clearly illustrative of the conditions set forth in 10 U.S.C. 2304(a)(11) for use of this authority. (See §§ 18–3.211 and 18–3.211–2.) In the third paragraph, set forth those facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable.

(b) *Determination.* Following the format set forth in the sample below, use the appropriate terms to state precisely whether the proposed procurement is for experimental, developmental, or research work or the making or furnishing of property for experiment, test, development, or research; or for a combination of these.

(c) *Sample format.*

DETERMINATION AND FINDINGS

Decision To Negotiate an Individual Contract Under 10 U.S.C. 2304(a)(11)

FINDINGS

1. The proposed procurement is to develop and obtain a compressor unit to provide high pressure helium to the hypervelocity jets of the Hypersonic Aerothermal Dynamics Facility for the investigation of the aeroelastic problems of Dynasoar-type vehicles during exit and reentry and the reentry problems of other vehicles, such as Apollo or lunar space vehicles, where the largest flight dynamic pressures may be encountered.

2. The proposed contract will require the contractor to do development work in the design and engineering of the compressor unit. Research work will be necessary to support the development stage of the work, primarily to determine the type of components to be included in the unit to insure performance requirements.

3. Formal advertising is not feasible and practicable for this procurement because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done; only the ultimate objectives and the general scope of the work can be outlined.

DETERMINATION

On the basis of the above findings, I hereby determine that the proposed procurement is for developmental and research work, and for the making of property for research.

Upon the basis of the determination and findings above, I hereby decide that this contract will be negotiated pursuant to 10 U.S.C. 2304(a)(11).

DATE ----------.

§ 18–3.305–2 Class of contracts under 10 U.S.C. 2304(a)(11). (See §§ 18–3.211 and 18–3.301(b).)

(a) *Findings.* In the first paragraph identify the program, the project, and the project number (using the NASA Financial Management Manual, Agency-Wide Coding Structure, NPC 300–4) to which the contemplated procurements are oriented. A statement also will be included in the first paragraph that the determination and findings cover only the procurement requirements that are provided for and further defined under the program/project cited, except for such items of property or supplies for which formal advertising is feasible and practicable. In the second paragraph, under "Findings," describe briefly and clearly the scope and nature of the work to be performed. When property and services are to be procured under a "Class Determination and Findings," a statement will be made that the "Determination and Findings" does not apply to those items of property or supplies for which formal advertising is feasible and practicable. In the third paragraph, set forth the facts and circumstances that are clearly illustrative of the conditions set forth in 10 U.S.C. 2304(a)(11) for use of this authority (see §§ 18–3.211 and 18–3.211–2). In the fourth paragraph, set forth facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable.

(b) *Determination.* Following the format set forth in the sample below, use the appropriate terms to state whether the proposed class of contracts will be for experimental, developmental, or research work; or the making or furnishing of property or supplies for experiment, test, development, or research; or for a combination of these. A statement of the period (not to exceed one year) for which the determination and findings will be effective will be included.

(c) *Sample format.*

DETERMINATION AND FINDINGS

Decision to Negotiate a Class of Contracts under 10 U.S.C. 2304(a)(11)

FINDINGS

1. This procurement will consist of one or more contracts for the accomplishment of the Advanced Technology Program for Liquid Propellant Rocket Engines, except for such items of property or supplies for which formal advertising is feasible and practicable and will cover only procurement requirements that are provided for and further defined under the following project citation:

RA Engine Project
Project Nr XX–XX–XXX–XXX

2. The proposed class of contracts is for the Advanced Technology Program for Liquid Propellant Rocket Engines, which has as its goal the development of the necessary technology for reliable rocket engines that are needed for launch vehicles and for spacecraft, except for such items of property or supplies for which formal advertising is feasible and practicable. These procurements will involve study and analysis of problems and possible solutions relating to new and unproven concepts in the field of liquid propellant rocket engine systems, subsystems, components, instruments, propellants, fabrication techniques, materials, storage and environmental factors, and aerothermochemistry and heat transfer properties. The procurements will also involve the experimental demonstration of the feasibility of new and unproven concepts and development of the technology required to bring new or unproven concepts into practical use.

3. The proposed procurements will require contractors to study, analyze, and investigate problems in the field of liquid propellant rocket engine systems, and, on the basis of experiments, demonstrate the feasibility of the new concepts which result from these studies.

4. Formal advertising is not feasible and practicable for these procurements because it is impossible to describe in precise detail, or by any definite drawings or specifications, the nature of the work to be performed under

the proposed contracts; only the ultimate objective and the general scope of the work can be outlined.

DETERMINATION

On the basis of the above findings, I hereby determine that the proposed class of contracts is for experimental and research work and for the making or furnishing of property for experiment, test, and research.

Upon the basis of the determination and findings above, I hereby decide that this class of contracts will be negotiated pursuant to 10 U.S.C. 2304(a)(11).

This class determination shall remain in effect until June 30, 1963.

DATE _____.

§ 18–3.305–3 Individual contract under 10 U.S.C. 2304(a)(14). (See § 18–3.214).

(a) *Findings.* In the first paragraph, under "Findings," describe briefly and clearly the supplies or property being procured. Such description must include a statement that the supplies or property are technical or specialized in nature and must explain why they are so categorized. The second paragraph must establish either one or, preferably, both of the following:

(1) That furnishing the supplies or property requires a substantial initial investment and that such investment (or a substantial part of it) has already been made by one source (or by the Government in such source), so that procurement by formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment;

(2) That furnishing the supplies or property requires an extended period of preparation for manufacture, that one source has already made such preparation (or a large part of it), and that procurement by formal advertising would result in duplication of necessary preparation which would unduly delay the procurement of the supplies or property.

In the case of subparagraph (1) of this paragraph, provide estimates of the original investment and the amount that would have to be duplicated at the expense of the Government. In the case of subparagraph (2) of this paragraph, show that such delay would be prejudicial to the mission of NASA. In both cases, use specific facts relating to the particular procurement, not unsupported statements of general applicability.

(b) *Determination.* Use the following Determination in its entirety, where applicable; otherwise delete the inapplicable portions. For example, the supplies might be either technical or specialized, in which case only one term would be used; or the procurement might involve substantial investment but not an extended period of preparation, in which case irrelevant language would be deleted and the remainder combined in one sentence.

DETERMINATION

On the basis of the above findings, I hereby determine that the proposed contract is for supplies or property of a technical and specialized nature requiring a substantial initial investment and an extended period of preparation for manufacture and that procurement by formal advertising:

(i) Would be likely to result in additional cost to the Government by reason of duplication of investment; and

(ii) Would result in duplication of necessary preparation which would unduly delay the procurement.

§ 18–3.306 Procedure with respect to determinations and findings.

Determinations and Findings for authority to negotiate required by §§ 18–3.202, 18–3.207 and 18–3.210 through 18–3.215 shall be signed by the appropriate official prior to issuance of a request for proposals or quotations. Any modifications of such Determinations and Findings subsequently found to be necessary will not require cancellation of the request for proposals or quotations, provided the Determinations and Findings as modified, support negotiation under any one of the authorities cited in §§ 18–3.201 through 18–3.217. Where the facts continue to support the negotiation but under an exception for which Determination and Findings is not required, cancellation of the Determination and Findings will not require cancellation of the request for proposals or quotations. Where a Determination and Findings is executed by the Administrator or Deputy Administrator, NASA, and is not used, the initiating activity should return the Determination and Findings to the Director of Procurement (Code KDR), explaining the circumstances why the Determination is no longer required.

§ 18–3.306–1 Justification required.

(a) When a determination is required to be made in NASA Headquarters pursuant to the provisions of Subparts 18–3.2 and 18–3.3, and preparation of a procurement plan is not required (see § 18–3.852–2), field installations shall prepare a memorandum setting forth a detailed justification (including supporting documents or information) of the reasons why it is necessary to place a contract by negotiation rather than by formal advertising. The following information shall be included in the justification:

(1) A brief and concise description in nontechnical language of the supplies or services to be procured.

(2) The authority selected for negotiation and a complete statement of the facts and circumstances which clearly illustrates the conditions described for use of this authority.

(3) Identification of the program with which the proposed procurement is associated, name of the project, project approval number, and the date and authority by which the project approval was granted, and the technical office with which this program and project information was coordinated; a statement that the technical office initiating the requirement has concurred in the technical description of the work as set forth in the proposed determination and findings; identification of the technical office that will be responsible for technical monitoring of the contract once it is placed.

(4) The names and addresses of all sources to which requests for proposals will be issued. If negotiation is to be conducted with only one source, a Justification for Noncompetitive Procurement will be prepared in accordance with § 18–3.802–2(d).

(5) Any pertinent information obtained, where circumstances required preliminary discussions with potential sources.

(6) The estimated cost of the proposed contract.

(7) A detailed statement setting forth those facts and circumstances that clearly and convincingly establish why formal advertising is not feasible and practicable for the particular procurement.

(8) The proposed type of contract.

(b) When a determination is required to be made in NASA Headquarters pursuant to the provisions of Subparts 18–3.2 and 18–3.3, and preparation of a procurement plan is also required (see § 18–3.852–2), field installations shall use the procurement plan as the detailed justification required by paragraph (a) of this section.

(c) In addition to the above, an original and one copy of NASA Form 543, "Justification for Negotiation," shall be submitted with the proposed determination and findings. The original shall be returned to the installation with the determination and findings and the copy shall be retained for Headquarters files.

§ 18–3.306–2 Preparation and submission.

(a) When § 18–3.306–1(a) is applicable, installations shall submit four copies of the proposed determination and findings with two copies of the justification (and any other supporting documents considered necessary) to the Director of Procurement for review and signature of appropriate authorities.

(b) When § 18–3.306–1(b) is applicable, installations shall submit four copies of the proposed determination and findings with two copies of the procurement plan to the Director of Procurement for review and signature of appropriate authorities. When approval of the procurement plan by NASA Headquarters is required (see § 18–3.852–4), the submission under the preceding sentence shall be made concurrently with the submission of the proposed procurement plan for approval by NASA Headquarters, with two copies of the proposed procurement plan designated as the justification for the proposed determination and findings.

§ 18–3.307 Filing of determinations and findings.

A copy of each determination and findings shall be filed with the contract to which it applies. Each determination and findings made pursuant to the authority of sections 2304(a)(11) through (16), 2306(c), and 2307(c) of Title 10 U.S.C. shall be retained in the files of the NASA installation concerned for a period of six years following the date of each respective determination.

§ 18–3.308 Retention of data with respect to negotiation.

In each case where a purchase or contract is negotiated except under §§ 18–3.202 to 18–3.206 inclusive, data with respect to the negotiation shall be preserved in the files of the NASA installation concerned for a period of six years following final payment on such contract. With respect to the retention of data to support small purchases, see § 18–3.603–2(c).

Subpart 18–3.4—Types of Contracts

§ 18–3.400 Application.

The provisions of 32 CFR Part 3 (Subpart D) are incorporated herein by reference except as to the use of incentive type contracts. Policies and procedures to be followed in the use of incentive contracts are set forth in § 18–3.450. Where special approvals are required under the ASPR provisions incorporated herein by reference the approval of the Director of Procurement is required. (See also § 18–3.302 requiring approval by the Administrator of fixed fees in excess of limitations specified therein.)

§ 18–3.450 Incentive contracts.

(a) *Policy.* It is NASA policy to make judicious and effective use of incentive contracts of both the cost and the performance type. Particular care and judgment are required in choosing procurements appropriate for incentive contracts, and in framing and negotiating the specific incentive terms. The procedures set forth below in this § 18–3.450 are established to:

(1) Effectively seek out procurements that lend themselves to the use of contract incentive provisions;

(2) Avoid the use of incentive provisions in situations where they are unsuited and where their use could have adverse results; and

(3) Ensure, in connection with contracts in which incentive provisions are to be included, that the skills necessary to draft and negotiate the appropriate incentive provisions are available to NASA procurement offices.

(b) *Responsibilities of the Director of Procurement.* In order to implement the policy objectives of paragraph (a) of this section for use of incentive contracts, the Director of Procurement will perform the following functions:

(1) Review, with Headquarters Program Offices and with NASA field installations, as necessary, forthcoming procurements in order to select, well in advance, those procurements which appear to lend themselves to the inclusion of incentive features;

(2) Provide or arrange for guidance and technical assistance to procurement offices in connection with the drafting and negotiation of incentive provisions in those contracts approved in advance by the Director of Procurement, for application of incentive provisions:

(3) Review and make recommendations to field installations with regard to proposals made by them as to the use of incentive provisions in forthcoming contracts;

(4) Appraise the capability within NASA to select, negotiate, and administer incentive contracting and assist in making required training arrangements;

(5) Study, in conjunction with the Directors of Management Information Systems Division and the Financial Management Division, Office of Administration, NASA Headquarters, the linking of incentive provisions to PERT-Cost;

(6) Maintain close contact with the Department of Defense in the incentives field and keep informed of other studies, literature, or developments within the Government and industry bearing on incentive contracting;

(7) Develop more precise policy guidelines governing use of incentive provisions; and

(8) Report quarterly to the Associate Administrator regarding the progress being made within NASA to utilize incentive provisions.

In carrying out the functions specified in this paragraph (b), the Director of Procurement will utilize the assistance of the Headquarters Program Offices, the General Counsel, and the Audit Division.

(c) *Approvals required before selection of contracts for inclusion of incentive provisions.*

(1) No procurement will be selected for the inclusion of an incentive provision until such inclusion has been recommended or approved in advance by the Director of Procurement. However, such advance recommendation or approval shall not be construed as requiring the preparation of a contract with incentive features if it appears, in the course of negotiations that the exercise of good business judgment requires a different contractual arrangement. Every procurement plan shall contain a discussion of the feasibility of applying incentive provisions, as well as a recommendation regarding the use of such provisions in the particular procurement.

(2) The Director of Procurement will, in the case of each procurement for which incentives have been recommended or approved, provide such assistance as may be necessary to ensure that the procurement office in question has the requisite capability to draft, negotiate, and administer the incentive provisions. The degree to which Headquarters personnel participate in any phase of the preparation or negotiation of such a provision will be determined by the Director of Procurement.

(3) Due to the difficulties inherent in incentive contracting, any proposed contract containing an incentive provision will require the approval of the Director of Procurement before it becomes a contract binding on the parties, regardless of whether the contract requires approval at NASA Headquarters under other provisions of this chapter or whether advance authorization under subparagraph (1) of this paragraph was obtained.

(d) *Technical assistance.* The selection, drafting, negotiation, and administration of contract incentives require a team effort in which substantial technical assistance must be provided to procurement and legal personnel. The contracting officer shall obtain such assistance from technical personnel in his organization and shall be satisfied that the project director or comparable official is in agreement with the incentive approach being followed in any given case. Any differences of opinion shall be brought to the attention of the Director of Procurement.

(e) *Contract clause.* Section 18–7.108 of this chapter sets forth a standard incentive price revision clause for fixed-price incentive contracts with cost incentives.

Subpart 18–3.6—Small Purchases

§ 18–3.600 Scope of subpart.

This subpart prescribes policies and procedures for the purchase of supplies and nonpersonal services from commercial sources when the aggregate amount involved in any one transaction does not exceed $2,500. Such purchases shall be termed "small purchases." This Subpart 18–3.6 is not applicable to the procurement of supplies or services initially estimated to exceed $2,500 even though awards under such procurements do not exceed $2,500.

§ 18–3.601 Purpose.

The objectives of the simplified purchase methods prescribed herein are to reduce the administrative costs in accomplishing small purchases, to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts, and to eliminate costly and time-consuming paper processes.

§ 18–3.602 Policy.

(a) Small purchases shall be made by negotiation, except under special circumstances where it is clearly in the best interest of the Government to accomplish such purchases by more formal methods.

(b) The objective of helping small concerns to participate in Government contracting has wide potential application where small purchases are concerned, and, accordingly, placement of small purchases with small concerns is specifically encouraged, consistent, of course, with other valid considerations, such as price feasibility.

(c) When quotations are received on a number of related items (such as hardware items, spare parts for vehicles, or office supplies, etc.), one purchase order shall normally be issued to the firm quoting the lowest aggregate prices rather than issuing more than one purchase order on the basis of accepting the lowest quotation on each item.

(d) In arriving at the aggregate amount involved in any one transaction, there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

Requirements aggregating more than $2,500 shall not be broken down into several purchases which are less than $2,500 merely for the purpose of permitting negotiation or utilizing the small purchase methods authorized under this Subpart 18–3.6.

(e) Any one of the purchase forms or methods set forth in this Subpart 18–3.6 which is determined the most suitable to the immediate requirement and which will accomplish the procurement in the most efficient and economical manner shall be utilized.

§ 18–3.603 Competition.

§ 18–3.603–1 Solicitation.

(a) Reasonable competition means obtaining a sufficient number of quotations from qualified sources of supply so as to assure that the procurement is fair to the Government, price and other factors considered, including the administrative cost of the purchase. In arriving at the number of quotations to be solicited, due consideration will be given to the cost of the proposed solicitation in relation to the potential benefits to be derived by the Government consistent with good business.

(b) Reasonable coverage of the market for small purchases does not ordinarily require going outside the trade area in which the procurement office is located to obtain quotations. However, competition shall not be limited to suppliers of well-known and widely distributed makes or brands, nor shall quotations be solicited purely on a selective personal preference basis. New supply sources, disclosed through trade journals or other media, shall be continuously reviewed and, when appropriate, added to the list of available sources.

(c) The following factors influence the number of quotations required in connection with any particular purchase:

(1) The nature of the article or service to be procured, and whether highly competitive and readily available in several makes or brands, or relatively noncompetitive;

(2) Information obtained in making recent purchases of the same or similar item;

(3) The urgency of the proposed purchase;

(4) The dollar value of the proposed purchase; and

(5) Past experience concerning specific dealers' prices.

(d) Solicitation of quotations may be effected orally or in writing. Written solicitation should be used only in circumstances where:

(1) The suppliers are located outside the local area;

(2) Special specifications are involved;

(3) A large number of items is included in a single proposed procurement; or

(4) Obtaining oral quotations is not considered efficient.

(e) Where it is the practice for suppliers to furnish standing price quotations on supplies or services required on an intermittent and recurring basis, this information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, the purchaser shall assure that the price information is current and that the Government obtains the benefit of maximum discounts.

§ 18–3.603–2 Data to support small purchases.

(a) The manner of securing quotations and the nature and extent of information to be required for small purchases should be limited to only that deemed necessary to conclude purchase action.

(b) The following are illustrative of the extent to which quotation information should be recorded:

(1) Oral solicitations—When oral price quotations are obtained, informal records should be established which will reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. Handwritten notations on the Government purchase action request form, or whatever medium the purchaser is using as his basis for making the purchase, are satisfactory for this purpose.

(2) Written solicitations—Retention in the purchase files of written quotations received, or references to printed price lists used, will usually suffice as the record supporting the price paid.

(c) Purchase data collected or compiled during the course of arranging the purchase are for administrative and guidance value in making the purchase and issuing the appropriate purchase document. The retention of such data in the purchase files for use in subsequent reference, or as administratively required for management review, should be limited in time and quantity to the minimum necessary for such use.

§ 18–3.604 Imprest Fund.

For use of Imprest Funds, see NASA Management Instruction 7–3–4.

§ 18–3.605 Purchase order forms.

§ 18–3.605–1 Standard Form 44.

(a) *General.* Purchase Order-Invoice-Voucher (Standard Form 44) consists of four copies; i.e., a seller's invoice, seller's copy of invoice, receiving report, and memorandum copy. The use of an additional copy is authorized when essential to operating procedures.

(b) *Limitations on use.* Standard Form 44 is authorized for accomplishing small purchases only when all of the following conditions are satisfied:

(1) The transaction is not in excess of $2,500;

(2) The supplies or services are immediately available from the local trade area;

(3) One delivery and one payment will be made; and

(4) Its use is determined to be more economical and efficient than other small purchase methods.

(c) *Examples of use.* Examples as to the appropriate use of Standard Form 44 are as follows:

(1) Over-the-counter purchases;

(2) Purchases made by authorized individuals while away from the purchasing office; and

(3) Purchases at isolated stations.

§ 18–3.605–2 Standard Forms 147 and 148.

(a) *Authorized forms.* Order-Invoice-Voucher (Standard Form 147) and Order-Invoice-Voucher, Continuation Sheet (Standard Form 148), provide in one set of forms a purchase or delivery order, vendor's invoice, receiving report, and public voucher, with requisite space for purchase data, vendor's invoicing, and allied budget, accounting, and voucher payment data. These forms are designated primarily for use when single delivery, single payment transactions are contemplated at the time of issuance, and are for use when, in the judgment of the procuring office, the use of a combined order-invoice, receiving report, and voucher will simplify the procurement process. Primary uses of Standard Form 147 are (1) as a purchase order for small purchases and (2) as a delivery order for ordering or scheduling delivery against an established contract. The use of Standard Form 147 as a delivery order against a blanket purchase order is in keeping with its intended use.

(b) *Availability of form.* (1) Standard Form 147 is available in 6-part sets from General Services Administration regional offices, where overprinting is not required and may be ordered in the same manner as other standard forms.

(2) Standard Forms 147 and 148 may be ordered overprinted with agency name, address, and serial number; and with special weight paper, length of carbons, or other items as specified by the ordering agency. The format of the form, the color of the paper, and the number of copies shall not be changed.

(c) *Special instructions.* (1) The use of the forms contemplates that the vendor will utilize copy 1 (original) as his invoice in billing the Government. However, in furtherance of the policy of encouraging vendors to make consolidated periodic billings in instances where several orders have been placed with the same dealer in the same billing period, agencies are requested to instruct vendors to make consolidated periodic billings on their own invoices or statement forms supported by originals of the Standard Forms.

(2) When procurement documented on the forms is paid for in cash, copy 1 of Standard Form 147 should be marked paid and signed and dated by the vendor or agent on the face thereof in the usual commercial manner. The vendor's certificate need not be signed when the form is receipted for cash payment. Cash register receipts or other commercial receipts may be attached in lieu of signature by the vendor.

§ 18–3.605–3 NASA Form 177.

NASA Form 177 may be used to make small purchases in lieu of Standard Form 44 or 147 where its use is determined to be more efficient or economical by the procuring installation.

§ 18–3.605–4 Ship and quote form.

The NASA Ship and Quote form may be used to make small purchases in lieu of Standard Form 44, 147, or NASA Form 177 where the following conditions apply:

(a) The material or supplies to be ordered to not exceed $250, except that the procurement officer may authorize use of this form for small purchases in excess of $250 where he determines in writing that its use is more efficient or economical than other methods;

(b) The current price can be established with reasonable accuracy by reference to catalogs, price lists, recent purchases, or advertisements;

(c) The specifications are clear and capable of only one interpretation; and

(d) The order is for supplies or minor equipment (tools, etc.) or for minor services, and the supplier's standard commercial guarantee is acceptable.

§ 18–3.606 Blanket purchase agreement method.

§ 18–3.606–1 General.

The blanket purchase agreement method provides a means of establishing "charge accounts" with qualified sources of supply to cover anticipated small purchases, as required, of readily available items of the same general category. It obviates the need for the issuance of a multiplicity of individual purchase instruments for small quantities of supplies. To the extent practicable, blanket purchase agreements for like items should be placed concurrently with more than one supplier. All potential sources in the local trades area shall be given an equal opportunity to furnish supplies or services under blanket purchase agreements. In carrying out this policy, the following procedures should be followed:

(a) Generally, not less than three or more than four blanket purchase agreements should be placed concurrently for like items; and

(b) Requests exceeding $250 should be placed after negotiating with each blanket purchase agreement holder, unless special circumstances do not permit. In such instances the file should indicate the nature of these special circumstances.

§ 18–3.606–2 Establishment of blanket purchase agreement.

Blanket purchase agreements may be established by the issuance of a purchase order which shall provide that:

(a) The supplier shall furnish the supplies or services, described therein in general terms, if and when requested by the contracting officer or his authorized representative during a specified period and within a stipulated aggregate amount: *Provided,* However, that no individual request shall exceed $2,500;

(b) The Government is obligated only to the extent of such requests as are actually made against the blanket purchase agreement;

(c) The supplier's established price lists and discounts shall apply to all requests issued against the blanket purchase agreement;

(d) Requests shall generally be made orally, except that informal correspondence may be used when more convenient;

(e) All delivery tickets issued by the supplier shall fully identify the blanket purchase agreement, the date the request was made, the items, the prices, and other relevant data, and be signed by the Government employee who received the items; and

(f) The supplier shall submit an itemized invoice not less frequently than once each month, or upon expiration of the blanket purchase agreement, whichever occurs first, covering all deliveries made under the blanket purchase agreement not previously invoiced and paid for, with payment to be made on the basis of this invoice.

§ 18–3.606–3 Conditions for use.

Blanket purchase agreements are authorized when:

(a) There is a repetitive need for small quantities of supplies or services of closely related types, such as electrical supplies, plumbing supplies, repair parts or services, or miscellaneous items of hardware;

(b) The maximum period of time covered by one blanket purchase agreement shall not exceed 3 months or extend beyond the fiscal quarter in which issued and the maximum aggregate amount of requests to be issued against one blanket purchase agreement shall not exceed $15,000;

(c) No individual request issued against one blanket purchase agreement shall exceed $2,500; and

(d) The use of individual purchase instruments is deemed administratively costly to the Government.

§ 18–3.606–4 Fiscal control.

The contracting officer shall maintain informal records of the requests made against each blanket purchase agreement, so as to ensure that the value of requests made does not exceed available funds and that the designated monetary limitations are not exceeded.

§ 18–3.606–5 Further guidance.

For further guidance in connection with the use of blanket purchase agreements, see FPR 1–3.606.

§ 18–3.607 Use of other NASA forms.

Where necessary, small purchases may also be effected by the use of a negotiated (two-party) formal contract, as, for example, where the procurement is (a) classified or (b) requires specific contract provision relating to technical inspection or test, specifications changes, Government-furnished property, insurance, patents, price adjustments, or the like.

Subpart 18–3.7—Negotiated Overhead Rates

§ 18–3.700 Scope of subpart.

This subpart prescribes policy and procedures with respect to the establishment and use of negotiated overhead rates in NASA cost-reimbursement type contracts and subcontracts.

§ 18–3.701 Definitions.

§ 18–3.701–1 Negotiated final overhead rate.

The term negotiated final overhead rate as used in this Part 18–3, means a percentage or dollar factor which expresses the ratio mutually agreed upon by NASA and the contractor, at the close of a regularly stated period (preferably the contractor's fiscal year), of allowable indirect expense incurred in the period to direct labor, manufacturing cost, cost of sales, or other appropriate base of this same period. Such rates are used as a means of determining the amount of reimbursement under a contract for the applicable indirect cost and are designated "postdetermined" overhead rates. In certain circumstances involving educational institutions, negotiated final overhead rates may be used as a means of determining the amount of reimbursement for the applicable indirect costs to be incurred during a future period of contract performance; in such cases, they are termed "predetermined" overhead rates. (See § 18–3.704–2(b).)

§ 18–3.701–2 Provisional overhead rate.

The term provisional overhead rate as used in this Part 18–3, means a tentative overhead rate established for interim billing purposes pending negotiation of the final overhead rate. Provisional overhead rates are incorporated in the contract and require an amendment to change.

§ 18–3.701–3 Overhead (indirect costs).

The term overhead (indirect costs) as used in this Part 18–3, includes, but is not limited to, the general groups of indirect expenses such as those generated in manufacturing departments, engineering departments, tooling departments, general and administrative departments, and, if applicable, indirect costs accumulated by cost centers within these general groups. In the case of contractors using fund accounting systems (e.g., educational institutions), the term includes, but is not limited to, the general groups of expenses, such as general administration and general expense, maintenance and operation of physical plant, library expenses, and use charges for buildings and equipment.

§ 18–3.701–50 Negotiating authority.

The term negotiating authority as used in this Part 18–3, means the office designated by the Office of Procurement to conduct the negotiation of final overhead rates with a contractor.

§ 18–3.702 Purpose.

The major purposes of negotiated final overhead rates are: (a) to effect uniformity of approach in cases where more than one contract or one or more field installations and the Department of Defense are involved with the same contractor; (b) to effect economy in administrative effort; and (c) to promote timely settlement of reimbursement claims.

§ 18–3.703 Primary use.

Negotiated final overhead rates are authorized for use primarily in cost-reimbursement type contracts for research and development with commercial organizations and non-profit or educational institutions. They may also be used in other cost-reimbursement type contracts after a determination is made by the procurement officer that their use is advantageous to the Government. Where it is not apparent that any one of the major purposes enumerated in § 18–3.702 results, or will result, by the use of negotiated final overhead rates, indirect costs will be negotiated on the basis of an advisory audit report.

§ 18–3.704 Contract clauses.

§ 18–3.704–1 Contracts with concerns other than educational institutions.

When it has been determined that negotiated overhead rates are to be used pursuant to this Part 18–3, insert the following clause:

NEGOTIATED OVERHEAD RATES (JANUARY 1964)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties as specified below.

(b) The contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule, shall submit to the Contracting Officer, with a copy to the cognizant audit activity and the Office of Procurement, NASA Headquarters, a proposed final overhead rate or rates for that period based on the contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the contractor and the negotiating authority shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 2, of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, and (iii) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

§ 18–3.704–2 Contracts with educational institutions.

(a) Insert the following clause in contracts with educational institutions where postdetermined overhead rates are to be used pursuant to this Part 18–3.

NEGOTIATED OVERHEAD RATES (POSTDETERMINED) (JANUARY 1964)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer, with a copy to the cognizant audit activity and the Office of Procurement, NASA Headquarters, a proposed final overhead rate or rates for that period based on the contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the contractor and the negotiating authority shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, and (iii) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over- or under-payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(b) Provision may be made in cost reimbursement type research and development contracts with educational institutions for payment of reimbursable indirect costs on the basis of predetermined overhead rates, provided that this basis is used with respect to all contracts with an institution. Insert the following clause in contracts with educational institutions where such negotiated overhead rates are to be used pursuant to this Part 18–3.

NEGOTIATED OVERHEAD RATES (PREDETERMINED) (JANUARY 1964)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties as specified below.

(b) The contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year, shall submit to the Contracting Officer, with a copy to the cognizant audit activity and the Office of Procurement, NASA Headquarters, a proposed predetermined overhead rate or rates based on the contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the contractor and the negotiating authority shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of cost and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 3, of the NASA Procurement Regulation.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates (Postdetermined)" clause set forth in 3.704–2 of the NASA Procurement Regulation as in effect on the date of this contract.

(g) Allowable indirect costs for the period until the end of the contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

(c) When predetermined overhead rates are to be used and no such rate or rates have been established for the contractor's current fiscal year, the contracting officer shall obtain from the contractor during the contract negotiations a proposal for a predetermined overhead rate or rates to be applied until the end of such fiscal year. As far as practicable, such proposal should be based on the contractor's cost experience under similar contracts together with supporting cost data. The overhead rate or rates for such initial period shall be predetermined by negotiation and set forth in the contract schedule. The schedule shall also include the bases to which the rates apply and the period for which the rates apply. Pending establishment of predetermined overhead rates for the initial period, the contractor shall be reimbursed at billing rates acceptable to the contracting officer subject to appropriate adjustment when the final rates for that period are established.

§ 18–3.705 Policy.

Since many NASA contractors are under the negotiated overhead rate pro-

cedure with the Department of Defense, it is the policy of NASA to participate in joint negotiations with the Department of Defense. The NASA participant will be the Office of Procurement (Code KDC), or the NASA procurement office designated by the Office of Procurement, NASA Headquarters.

(a) NASA contractors not under the Department of Defense negotiated overhead rate procedure will be under NASA cognizance and the negotiations will be conducted by the Office of Procurement, or by the procurement office designated as the negotiating authority by the Office of Procurement (Code KDC), with selected field installations participating.

(b) A contractor currently under Department of Defense cognizance may eventually be transferred to NASA cognizance because of the shift in procurement predominance. Such transfer will be arranged by the Office of Procurement (Code KDC) which will designate the negotiating authority.

§ 18–3.706 Procedure.

(a) When a contractor is under NASA cognizance, the procedure for the establishment and use of negotiated final overhead rates will generally consist of submission by the contractor of an overhead rate proposal, obtaining an advisory audit report from the cognizant auditor, holding a prenegotiation conference for review of the contractor's proposal and the advisory audit report, conduct of negotiation, preparation of a negotiation report or summary, and execution of contract amendments.

(b) The contractor shall submit a copy of his proposal to the contracting officers of each NASA installation with which he has contracts, with a copy to the cognizant audit activity and the Office of Procurement (Code KDC).

(c) The cognizant audit activity will review the contractor's overhead rate proposal using Part 18–15 of this chapter as a basis for determining allowable costs. An advisory audit report will be submitted to the Procurement Officer of each NASA field installation having a contract with the contractor and a copy to the cognizant NASA Regional Audit Office and to the Office of Procurement (Code KDC). Such report shall set forth the findings of the audit activity including the results of discussion of such findings with the contractor.

(d) A prenegotiation conference will be held by the negotiating authority with attendance by the auditor, representatives of NASA field installations, as designated by the Office of Procurement, and other Government procurement and audit activities interested in/or planning to attend the negotiations. This conference will relate to the areas of difference between the advisory audit report and the contractor's proposal, any other factors pertaining to the negotiations, decide upon the approach to the negotiations and establish a consolidated negotiation position. As a further aid to the negotiating authority, a representative of the audit activity and/or a representative of the NASA Audit Division will, upon request, attend the negotiation conference.

(e) The negotiation conference will be conducted by the negotiating authority designated by the Office of Procurement (Code KDC). The allowability of costs and methods of cost allocation will be governed by Part 18–15 of this chapter. An agreement will be negotiated on final overhead rates, the specific items treated as direct charges and the provisional overhead rates if such rates are to be specified in the contract.

(f) At the completion of the negotiation, the NASA negotiating authority will prepare a negotiation report listing the names, titles, and organizations of those in attendance, the rates negotiated, the reasons for variation from the audit report, if any, the period of rate applicability, the basis for the determination of such rates and, where applicable, the provisional rates agreed upon for application in the succeeding period. Such report shall become the basis for amending the affected contracts and shall become a part of the contract file. Sufficient copies of the report shall be forwarded by the negotiating authority to the Office of Procurement (Code KDC), for distribution to all interested activities.

(g) Contract amendments will incorporate the negotiated final overhead rates, the bases to which they apply, and the period of rate applicability.

§ 18–3.707 Coordination.

(a) Because of the preponderance of contractors now subject to the negotiated overhead rate procedure with the Department of Defense, arrangements have been made with the Department of Defense to advise the Office of Procurement (Code KDC), of a pending overhead rate negotiation. All NASA field installations having an interest will be notified by the Office of Procurement of the scheduled negotiation. The notification will designate the NASA participant in such negotiations. The Grants and Research Contracts Division, Office of Space Science and Applications, generally will be the designated NASA participant in negotiations with educational institutions and nonprofit organizations. Should it be impossible for the designated participant to attend, the Office of Procurement (Code KDC) shall be notified and arrangements will be made to ensure that a NASA participant is in attendance.

(b) In cases where NASA becomes the sponsoring agency and has the responsibility for conducting the negotiation, the Office of Procurement, or a designee of that office, will be responsible for notifying all interested NASA field installations, the Office of Naval Material, Navy Department; The Chief, Pricing and Financial Division, Air Force Systems Command, Department of the Air Force; and the Chief, Procurement Support Division, Army Material Command, Department of the Army; who will, in turn, notify the respective procurement activities within their agencies.

(c) Currently, the Department of Defense prepares and distributes a "Master List of Commercial Contractors, Nonprofit Institutions and Educational Organizations Operating Under Negotiated Overhead Rates for Cost Type Contracts" which indicates the Government agency sponsoring the negotiation. This list will be supplemented by the Office of Procurement (Code KDC) to include those contractors for which NASA becomes the sponsoring agency. As changes are made in the list, the field installations will be advised.

§ 18–3.708 Ceilings on indirect costs.

(a) Cost-sharing arrangements are occasionally made wherein cost participation by the contractor is evidenced by an agreement to accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated ceiling overhead rate may be used for application prospectively.

(b) In other cases, it may be desirable to provide for a ceiling on overhead rates beyond which the contractor will absorb the costs. For example: (1) The proposed contractor is a new company or has been recently reorganized and there may be no past record of indirect costs incurred, or (2) the proposed contractor may have a recent record of rapidly increasing overhead rates due, perhaps, to a declining volume of sales without a commensurate decline in indirect expense, or (3) the proposed contractor may be seeking to enhance its competitive position in a particular procurement by basing its proposal on overhead rates lower than those which reasonably may be expected to occur during contract performance and which would likely cause a cost overrun. When any of the foregoing circumstances are apparent with either a proposed prime or subcontractor, reasonable, realistic and equitable ceilings should be negotiated on overhead rates.

(c) In the cases cited in paragraphs (a) and (b) of this section, the Government will not be obligated to pay any additional amount on account of overhead above the negotiated ceiling rates. In the event overhead rates resulting from an audit of allowable costs are less than the negotiated ceiling rates, the ceiling rates will be reduced in conformity with the lower rates.

(d) A copy of each contract providing for a ceiling on overhead rates will be forwarded to the Office of Procurement (Code KDC).

Subpart 18–3.8—Price Negotiation Policies and Techniques

§ 18–3.800 Scope of subpart.

This subpart sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to consent or review and policies and procedures applicable to the initiation of procurement requests and solicitation and evaluation of proposals. The principles in this subpart apply to negotiation of prices on all types of contracts

and to revised prices as well as initial prices.

§ 18–3.801 Basic policy.

§ 18–3.801–1 General.

It is the policy of NASA to procure supplies and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

§ 18–3.801–2 Responsibility of contracting officers.

(a) Contracting officers acting within the scope of their appointments (and in some cases acting through their authorized representatives) are the exclusive agents of NASA to enter into and administer contracts on behalf of the Government in accordance with NASA procurement instructions. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill, and judgment and shall avail himself of all organizational tools (such as the advice of specialists in the fields of contracting, finance, law, contract audit, program management, system reliability, engineering, traffic management, and cost analysis) necessary to accomplish the purpose as, in his discretion, will best serve the interests of the Government.

(b) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their counsel, and availing himself of their skills as much as possible. The contracting officer shall obtain simultaneous coordination of the specialist efforts to the greatest practical extent. He shall not, however, transfer his own responsibilities to them. Thus, the final negotiation of price, including price redetermination and evaluation of cost estimates, remains the responsibility of the contracting officer.

(c) When a contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable, the contracting officer shall, in coordination with the initiator of the purchase request, determine the feasibility of developing an alternate source of supply and take such action within his authority may be appropriate in the circumstances. If, after exhausting this course of action, a satisfactory solution has not been obtained, the contracting officer shall refer the prospective procurement to higher echelons of the procurement organization. Such referral shall include a complete statement of the attempt made to resolve the matter. With regard to a contractor's refusal to provide cost or pricing data, see § 18–3.807–6.

§ 18–3.801–3 Responsibility of other personnel.

Personnel, other than the contracting officer, who establish the requirements for the product or services to be procured, can influence the degree of competition obtainable as well as have a material effect upon prices. Failure to finalize requirements in sufficient time to allow (a) a reasonable period for preparation of requests for proposals; (b) preparation of quotations by offerors; (c) contract negotiation and preparation; and (d) adequate performance lead time, causes delinquency in performance and uneconomical prices. Requirements issued on an urgent basis or with unrealistic performance schedules should be avoided since they generally increase price or restrict desired competition. Personnel determining requirements, specification, reliability and quality assurance, adequacy of sources of supply, and like matters, have responsibility in such areas, equal to that of the contracting officer, for timely, sound, and economical procurement.

§ 18–3.802 Preparation for negotiation.

§ 18–3.802–1 Product or service.

Knowledge of the product or service, and its use is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

§ 18–3.802–2 Selection of sources.

(a) *Competition.* It is NASA policy that competition will be obtained whenever possible. Companies that have indicated their interest by filing Standard Form 129, "Bidder's Mailing List Application," and any other companies that are known to be competent in the field involved, should be considered for a pending procurement. No company shall be precluded from submitting a proposal merely because it was not initially furnished a request for proposals.

(b) *Locating prospective contractors.* There shall be a continuing effort by NASA procurement and technical personnel to search for and develop information on potential sources. The negotiator shall submit proposed procurements in excess of $2,500, which are to be awarded on a competitive basis, to the small business specialist for screening before requests for proposals are issued, in order that small business concerns may be given an equitable opportunity to compete for procurements for which they might qualify. However, see § 18–1.705–3 of this chapter. Prior to making a determination as to which firms will be solicited, the negotiator shall review the source list of companies which have filed Standard Form 129 and any other information, including brochures, surveys, discussions, or correspondence, indicating the companies' interest and ability in the field of procurement. The names of additional companies which are known to be interested and competent in the field shall be added.

(c) *Appraising prospective contractors.* When the preparation of proposals requires extensive work and expense to companies, especially in the case of research and development, the source list should be screened by technical personnel, the negotiator, and small business personnel, and requests for proposals sent only to those companies which not only are technically qualified but are known to have the experience, management capabilities, and facilities to perform the contract. In those circumstances where the number of eligible companies is excessively large, proposal requests need only be sent to a representative number of companies which will assure effective competition: *Provided, however,* That in subsequent procurements the list will be rotated to provide all qualified firms an equal opportunity to submit proposals.

(d) *Noncompetitive procurement.* (1) While competition must be obtained whenever it is available, there are instances where only one institution or company is qualified by reason of experience, specialized facilities, or technical competency to perform the work within the time required and at reasonable prices. In such an instance, the initiating technical office may recommend to the contracting officer that only one institution or company be selected for negotiation. This recommendation shall be in writing and will be contained in a separate document entitled "Justification for Noncompetitive Procurement" and shall set forth full and complete justification for the selection (see § 18–3.852–2). Such written justification will be approved by the procurement officer of the installation with the concurrence of the chief of the installation's cognizant technical division, except as otherwise authorized in subparagraph (2) of this paragraph, and will be included in the contract file. Where a procurement plan is required by § 18–3.852 for the particular procurement contemplated, the Justification for Noncompetitive Procurement will be prepared and submitted in accordance with § 18–3.852–2.

(2) The provisions of this paragraph (d) are not applicable to: (i) Procurements of $250 or less; (ii) purchases through or from other Government agencies; (iii) purchases of utility services where the services are available from only one source, or (iv) procurements of architect-engineer services. For small purchases in excess of $250, but

not to exceed $2,500, a statement justifying the noncompetitive procurement, signed by the contracting officer, will be placed in the purchase order file. For procurements in excess of $2,500 but not in excess of $100,000, the procurement officer may delegate, in writing, to appropriate individuals the authority to approve the Justification for Noncompetitive Procurement statement.

§ 18–3.802–3 Requests for proposals.

(a) *Preparation and submission.* Requests for proposals, including modifications thereof, shall be prepared by the procurement office, with assistance from technical or other offices as required and be signed by the contracting officer. The Sample Request for Proposals (NASA Form 529) shall be utilized for general guidance in preparing requests for proposals for major research and development contracts. The request for proposals has a twofold purpose: (1) to convey to prospective contractors the information they need to prepare a proposal properly, and (2) to solicit the information that procurement and technical personnel need to appraise the proposals of prospective contractors. The request for proposals shall be as explicit and complete as possible in stating:

(i) Item description or statement of work;

(ii) Required delivery or performance schedule;

(iii) Government-furnished property, special tooling, or facilities, if any;

(iv) Method and format price of quotation desired (fixed-price or cost type, if known at the time), including a reference to the necessity for cost or price breakdown;

(v) Contract clauses, including copies of applicable Standard or NASA Forms, which will form a part of the contract, and any report forms or handbooks required to be used or followed in complying with the terms of the contract;

(vi) The factors that will be considered in evaluating the proposals together with an indication of the relative importance to be given to the factors, where applicable;

(vii) Requirements for reliability and quality assurance programs;

(viii) When the NASA PERT System is to be applicable to the procurement, the following provision will be included in the request for proposal:

NASA PERT System (April 1962)

A proposed time schedule for performance of the work should be set out by phases or parts of the project, and show interrelationships among phases. This proposed schedule should be supported by an accompanying PERT network, prepared in general conformity with the instructions of the NASA PERT Handbook.

Prospective contractors are advised that the successful contractor will be required to implement the NASA PERT System and report program progress biweekly.

(ix) If a firm fixed-price contract or fixed-price contract with escalation is to be awarded, see § 18–1.115 of this chapter;

(x) The requirement for furnishing the representation set forth in § 18–12.802–4 of this chapter, and

(xi) Requirements for the contractor to furnish data, when the requirement for data is known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract. See Subpart 18–9.2 of this chapter for detailed instructions and the required clauses.

(xii) Any other pertinent information (such as the requirement for the submission of a proposed "make-or-buy" program).

Requests for proposals, including requests for revised proposals, shall be in writing and shall specify a date for their submission. When advisable, particularly in the case of research and development, proposals shall be requested in two parts: (*a*) An unpriced technical proposal, and (*b*) a cost proposal cross-referenced to the technical proposal. Any extension of time granted to one prospective contractor shall be granted uniformly to all. Each request for proposals shall be issued to prospective contractors at the same time, and no contractor shall be given an advantage.

(b) *Advance information copies.* Two copies of each request for proposals and changes to such request for proposals prepared pursuant to a procurement plan approved under § 18–3.852–5(a)(3) shall be forwarded to the Director of Procurement (Code KDR). These copies shall be forwarded at the earliest practicable date following completion of the final draft of the request for proposals. However, submission to the Director of Procurement shall in no event be later than the date the request for proposals is mailed to prospective proposers. The transmittal to the Director of Procurement shall identify the procurement plan to which the request for proposals applies. This requirement is in addition to the requirements of § 18–50.104 of this chapter.

(c) *Late proposals and late unsolicited revisions to proposals.* (1) Except with respect to procurements estimated not to exceed $2,500, written requests for proposals shall contain the following provision:

Late Proposals (June 1963)

The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the interest of the Government.

(2) Proposals, or modifications thereof, received from qualified firms after the latest date specified for receipt may be considered if there is a probability of a significant reduction in cost to the Government, or technical improvements, as compared with proposals previously received. In such case, the negotiator shall investigate the circumstances surrounding the submission of the late proposal or modification and evaluate its content. He shall then submit his recommendations and findings to the contracting officer, in writing, as to whether, in his opinion:

(i) The company submitting the proposal has an excusable reason for late submission;

(ii) There is an advantage to the Government to consider the proposal;

(iii) All companies submitting proposals should be resolicited; and

(iv) Time of performance permits such resolicitation.

The contracting officer shall thereupon determine whether the proposal should be considered or rejected, or a resolicitation of proposals should be made.

(3) When the failure of a proposal to arrive on time is due solely to delay in the mails for which the offeror was not responsible or when only one proposal is received, the contracting officer may consider the proposal.

(4) Offerors submitting late proposals that will not be considered will be notified by the contracting officer that his proposal was received late and will not be considered.

(5) The provisions of subparagraphs (1) through (4) of this paragraph are also applicable to late quotations. In the case of a request for quotations, the provisions set forth in subparagraph (1) of this paragraph will be appropriately modified.

§ 18–3.803 Type of contract.

(a) The selection of an appropriate type of contract and the negotiation of prices, or estimated costs and fee, are related and should be considered together. The objective is to negotiate a type of contract and a price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed-price contract, there should be compatibility between the type of contract selected and the contractor's accounting system. In view of the exploratory nature of research and development, and the uncertainties inherent in its successful accomplishment, cost-reimbursement type contracts normally will be utilized in accomplishing such procurements. Exception may be made when negotiating contracts of low monetary value where audit is impracticable or in contracts where the work to be performed can be described with a reasonable degree of definiteness and sufficient cost or pricing information is available to ensure that the contract price will be fair and reasonable.

(b) In the course of a procurement program, a series of contracts, or a single contract running for a lengthy term, the circumstances which make for selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular, the repetitive or unduly protracted use of a cost-plus-a-fixed-fee or time and materials contract is to be avoided where experience has provided a basis for firmer pricing which will promote more efficient performance and will place a more reasonable degree of risk on the contractor. Thus, in the case of a time

and materials contract, continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

§ 18–3.804 Evaluation of proposals.

§ 18–3.804–1 General.

Evaluation of proposals by all personnel concerned with the procurement will be completed expeditiously. The evaluation of proposals received may be accomplished in a number of different ways. The various methods of evaluation used by NASA, together with policies and procedures regarding their use, are set forth in §§ 18–3.804–2 and 18–3.804–3.

§ 18–3.804–2 Evaluation procedures not involving source evaluation board.

The evaluation procedures set forth in paragraphs (a) through (d) shall be utilized except where the procedures set forth in § 18–3.804–3 apply.

(a) *Responsibility of contracting officer.* (See § 18–3.801–2).

(b) *Technical evaluation.* Generally, procurement personnel are not qualified to evaluate proposals from a technical viewpoint and must rely on scientific and engineering personnel for this function. In research and development contracting, awards should usually be made to those companies that have the highest competence in the specific field of science or technology involved, although awards should not be made on the basis of research and development capabilities that exceed those needed for the successful performance of the work. It is imperative therefore that technical evaluations and recommendations be fully documented and reviewed by responsible personnel. Technical evaluation should include the following:

(1) The contractor's understanding of the scope of the work as shown by the scientific and technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved;

(5) The contractor's willingness to devote his resources to the proposed work with appropriate diligence; and

(6) The contractor's proposed method of achieving the reliability required.

In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written recommendations as to selection of source by the technical personnel, proposals shall be returned to the negotiator. The contracting officer is responsible for reviewing the justification in support of the recommendations of technical personnel to determine that the justification is adequate and that the documentation is complete.

(c) *Business evaluation*—(1) *Price and cost analysis.* Each proposal requires some form of price or cost analysis. The contracting officer must exercise judgment in determining the extent of analysis in each case. On high-dollar value procurements, particularly where effective competition has not been obtained, the analysis should be thorough, and the record carefully documented to disclose the extent to which the various elements of costs, fixed fee, or profit contained in the contractor's proposals were analyzed. The negotiation memorandum should also reflect the consideration given to the recommendations of the price analyst and the basis for nonacceptance or departure from the recommendations during the course of negotiations.

(2) *Other factors.* The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, he must consider such factors as the company's management organization, past performance, reputation for reliability, and availability of the required facilities, manpower, and financial resources.

§ 18–3.804–3 Evaluation procedures—use of source evaluation board.

(a) Source Evaluation Board procedures are appropriate for competitively negotiated procurements, except Architect-Engineer services and contracts for which the procedures have been specifically waived when:

(1) The estimated cost of the contract will exceed $1,000,000;

(2) The estimated cost of the contract will not exceed $1,000,000, but it is likely that the source selected will receive other contracts for later phases of the same project which, cumulatively, would total more than $1,000,000. (Examples of this category include feasibility studies and project definition contracts under approved programs or programs for which approval will be requested.); or

(3) A Source Selection Official determines the use of the Source Evaluation Board procedures are desirable.

(b) The detailed procedures regarding the designation and operation of Source Evaluation Boards are set forth in NPC 402.

§ 18–3.804–4 Disclosure of information prior to selection of contractor.

During the course of evaluation proceedings, whether or not a Source Evaluation Board is utilized, NASA personnel participating in any way in evaluating proposals shall not reveal any information concerning the evaluation under way to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. When other Government or Jet Propulsion Laboratory personnel participate in evaluation proceedings, they will be instructed to observe these restrictions. Following selection of a contractor, information will be provided to unsuccessful offerors in accordance with § 18–3.106–3.

§ 18–3.805 Conduct of negotiations.

§ 18–3.805–1 General.

(a) After evaluation of proposals written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered, in accordance with § 18–3.102(a), and due attention will be given to the factors cited in § 18–3.102(b).

(b) Procurement personnel, as well as other personnel concerned with the procurement, shall ensure that contract negotiations are completed expeditiously. However, all details of the negotiation must be completed before the contract is actually placed. This includes, to the extent applicable:

(1) Arrangements regarding Government-furnished property;

(2) Determination that the prospective contractor is responsible, including completion of pre-award surveys where required;

(3) Arrangements with other Government agencies for the use of facilities under their control;

(4) Where the contract will be administered by another Government agency, any necessary arrangements with the responsible activity of that agency; and

(5) Where the contract will involve access to classified information, verification that required security clearance has been obtained.

(6) The requirement for the furnishing of data by the contractor in the performance of the contract, both for technical evaluation purposes and for competitive reprocurement where follow-on procurement is probable, in those situations where the appropriate technical office has requested that the contracting officer obtain such data.

(7) If the offeror's proposal contains technical data marked with a restrictive legend, whether the Government desires rights to use such data (§§ 18–3.109 and 18–9.202–6).

(c) Whenever negotiations are conducted with more than one offeror, no indication shall be made to any offeror of a price which must be met to obtain further consideration since such practice constitutes an auction technique which must be avoided. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge (see § 18–1.1050 of this chapter). Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see paragraph (a) of this section) shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals must be submitted by that date. All such offerors shall be informed that any

revision received after such date shall be treated as a late proposal in accordance with the "Late Proposals" provisions of the request for proposals.

(d) In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (1) the lowest proposed cost, (2) the lowest proposed fee, or (3) the lowest total estimated cost plus proposed fee. This is not to say that potential contract cost is to be ignored. Potential costs should be based on what knowledge can be derived of the costliness of a particular contractor's operations and should not rely principally on the contractor's submitted cost estimate. The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and regulation and appropriate to the work to be performed (see § 18–3.808). Beyond this, however, the primary consideration in determining to whom the award shall be made is which contractor can perform the contract in a manner most advantageous to the Government.

§ 18–3.806 Cost, profit, and price relationships.

(a) Where products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition as set forth in § 18–3.805–1. The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors, including those in § 18–3.102.

(b) Profit or fee is only one element of price and represents a much smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided, the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profit that the most important consideration, the total price itself, is distorted or diminished in its significance. Government procurement is concerned primarily with the reasonableness of the price which the Government ultimately pays, and only secondarily with the eventual cost and profit to the contractor.

§ 18–3.807 Pricing techniques.

§ 18–3.807–1 General.

Policies set forth in this § 18–3.807 may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. Section 18–3.807 describes the principal price and cost evaluation techniques and the circumstances under which each may be used. They are equally applicable to initial and subsequent price negotiations.

§ 18–3.807–2 Requirement for price or cost analysis.

(a) *General.* Some form of price or cost analysis should be made in connection with every negotiated procurement action. The presence of adequate price competition, however, limits considerably the degree of analysis required. Cost data need not be requested when the contracting officer anticipates that there will be adequate price competition. However, if he determines, after proposals have been submitted, that there is not, in fact, adequate price competition, cost data may then be requested, unless there are other bases (e.g., pricing data) available for evaluating the reasonableness of the quoted price. When there is not adequate price competition and cost analysis is necessary, the extent of the analysis should be limited to that necessary to establish a sound basis for negotiation, taking into consideration the amount of the proposed contract and the cost and time needed to accumulate the necessary data for analysis.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a prospective price by the use of price data, not including a contractor's or subcontractor's cost data. Price analysis may be accomplished in various ways including the following:

(i) The comparison of the price quotations submitted;

(ii) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, Government-furnished materials, and the general level of business and prices);

(iii) The use of rough yardsticks (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to more intensive pricing inquiry;

(iv) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities and similar indicia, together with discount or rebate arrangements; and

(v) The comparison of proposed prices with estimates of costs independently developed by personnel within the purchasing activity.

(2) Price analysis, without resort to cost analysis, may be used to support the reasonableness of awards when there is adequate price competition or when price analysis in accordance with subparagraph (1) of this paragraph, by itself, provides a reasonable basis for award.

(c) *Cost analysis.* (1) Cost analysis, as distinguished from price analysis, is the process of:

(i) Obtaining a breakdown of cost from prospective contractors or subcontractors;

(ii) The appropriate verification of cost data;

(iii) The evaluation of specific elements of costs; and

(iv) The projection of this data to determine the effect on prices of such factors as—

(*a*) The necessity for certain costs;

(*b*) The reasonableness of amounts estimated for the necessary costs;

(*c*) Allowances for contingencies;

(*d*) The basis used for allocation of overhead costs and the reasonableness of contractor's sales forecast and the pool of indirect expenses associated with the cost of those sales; and

(*e*) The appropriateness of allocations of particular overhead costs to the proposed contract.

(2) Among the evaluations that should be made where the necessary data is available, are comparisons of a contractor's or offeror's current estimated costs with:

(i) Actual costs previously incurred by the contractor or offeror;

(ii) His last prior cost estimate for the same or similar item or a series of prior estimates;

(iii) Current cost estimates from other possible sources; and

(iv) Prior estimates or historical costs of other contractors manufacturing the same or similar items.

(3) Forecasting future trends in costs from historical cost experience is of primary importance in pricing. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends. In costs involving production of recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken. Similarly, in contracts extending over a period of several years, a budgeted overhead forecast should be obtained for the life of the contract.

§ 18–3.807–3 Cost and pricing data.

(a) When there is adequate price competition, cost data need not be requested. However, in the absence of adequate price competition or other basis for assuring reasonableness of price, the negotiating team must analyze the contractors' proposals and must be in possession of accurate, complete, and current cost or pricing data before decisions are made on contract prices. Accordingly, the contractor should be required to furnish such data promptly as it becomes available throughout the negotiation process.

(b) Title 10 U.S.C. Section 2306(f) (PL 87–653, September 10, 1962) requires that, in certain cases, contractors and

subcontractors certify as to the accuracy, completeness, and currency of cost or pricing data submitted to the Government in support of contract negotiations and price adjustments and prescribes that any prime contract, or change or modification thereunder, under which a certificate is required, will contain a provision that the price, including profit or fee, will be adjusted to exclude any significant sums by which such price was increased because the contractor, or any subcontractor required to furnish such a certificate, furnished cost or pricing data which was inaccurate, incomplete, or noncurrent.

(c) Contracting officers shall require contractors and subcontractors to submit, in the situations described below, accurate, complete, and current cost or pricing data and to certify, using the certificate form set forth in paragraph (b) of the Contractor and Subcontractor Cost or Pricing Data clause set forth in § 18–3.807–4, as to the accuracy, completeness, and currency of such data, except where the price or price adjustment is based on adequate price competition, as determined by the contracting officer, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation prior to:

(1) The award of any negotiated prime contracts where the price is expected to exceed $100,000;

(2) The pricing of any change or modification to a prime contract, both formally advertised and negotiated, where the price adjustment is expected to exceed $100,000;

(3) The award of any subcontract at any tier where the prime contractor and each higher tier subcontractor have been required to furnished a certificate, if the price of such subcontract is expected to exceed $100,000; and

(4) The pricing of any change or modification to a subcontract for which the price adjustment is expected to exceed $100,000 and where the prime contractor and each higher tier subcontractor have been required to furnish a certificate.

(d) The requirement for submission and certification of data may be waived in exceptional cases where the Administrator, NASA, authorizes it through a written determination in accordance with § 18–3.302(c).

(e) Where it is reasonably expected that a resulting contract will be in excess of $100,000, the request for proposals shall include, in addition to the information required by § 18–3.802–3(a), the Contractor and Subcontractor Cost or Pricing Data clause set forth in § 18–3.807–4. Offerors will be advised that pursuant to the provisions of 10 U.S.C. 2306(f), the successful contractor will be required to certify (using the form of certificate set forth in paragraph (b) of the Contractor and Subcontractor Cost or Pricing Data clause); except where the price negotiated is based on adequate price competition, as determined by the contracting officer, or established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation; that the cost or pricing data which he is required to furnish is accurate, complete, and current.

(f) The certificate required to be submitted by a contractor under the provisions of the Contractor and Subcontractor Cost or Pricing Data clause shall be obtained immediately prior to agreement on the related negotiated price or price adjustment.

§ 18–3.807–4 Contractor and subcontractor cost or pricing data clause.

The following clause shall be inserted in all contracts over $100,000 and in all contract modifications over $100,000 even though the original amount of the contract is $100,000 or less:

CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA (NOVEMBER 1962)

(a) (1) The Contractor shall require, under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each subcontractor under this contract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.

(2) The cost or pricing data called for under (1) above shall be submitted prior to (i) the award of each subcontract the price of which is expected to exceed $100,000 and (ii) the pricing of each change or modification to a subcontract under this contract for which the price adjustment is expected to exceed $100,000.

(3) Cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Contractor has not been required to furnish cost or pricing data and to certify that it is accurate, complete, and current; or (ii) the price or price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(4) In submitting the cost or pricing data, the subcontractor shall use the form of certificate set forth in paragraph (b) below and certify that the data are accurate, complete, and current as of a date prior to and as close as practicable to the date of award of the subcontract or to the date of the price adjustment of any change or modification. Such cost or pricing data and certificate of current cost or pricing data shall be submitted by subcontractors to the prime Contractor (or to their immediate next higher tier subcontractor, for delivery to the Contractor through successive higher tiers of subcontractors). Such data and certificates shall become a part of the prime contract records.

(b) The certificates required by this clause shall be in the form set forth below. The second date shown in the certificate shall be prior to and as close as practicable to the date of agreement of the related negotiated price or price adjustment. When the certificate is to be submitted by a subcontractor, the words "Contracting Officer or his representative" shall be deleted and the name of the firm requiring the certificate shall be inserted. Title 18 U.S.C. Section 1001 prescribes criminal penalties for making false representations to the Government.

CONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA (NOVEMBER 1962)

This is to certify that, to the best of my knowledge and belief:

(i) complete pricing data or cost data current as of _____ have been considered
(Date)
in preparing the _____
_____
(Describe the proposal, quotation, request _____
for price adjustment, or other submission involved giving appropriate identifying number, e.g., RFP No.)
and submitted to the Contracting Officer or his representative;

(ii) all significant changes in the above data through _____ have been
(Date)
similarly submitted; and no more recent significant change in such data was known to the undersigned at the time of executing this certificate; and

(iii) all of the data submitted are accurate.

Name _____
Title _____
Firm _____
_____
(Date of Execution)

(c) For purposes of verifying that cost or pricing data required to be submitted and certified to, either during negotiation of this contract or pursuant to the provisions of this clause, are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have access to and the right to examine those books, records, documents, and other evidence which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(d) Whenever the price of any change or modification to this contract is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contractor agrees to furnish the Contracting Officer cost or pricing data and shall certify, using the certificate set forth in paragraph (b) above, that to the best of his knowledge and belief such cost or pricing data are accurate, complete, and current as of a date prior to and as close as practicable to the date of agreement of the price adjustment.

(e) The Contractor agrees to insert paragraph (c), without change and the substance of paragraphs (a), (b), (d), and (e) of this clause in each subcontract hereunder in excess of $100,000, and in each subcontract of $100,000 or less at the time of making a change or modification thereto in excess of $100,000.

(f) Whenever the Contractor was required to furnish a certificate of current cost or pricing data, either during negotiation of this contract or pursuant to the provisions of this clause, or whenever a subcontractor hereunder was required to furnish such a certificate pursuant to the provisions of this clause or of a clause in the subcontract, and the Contracting Officer determines that the price of this contract, including any profit or fee, or that any price adjustment negotiated for any change or modification to this contract, has been increased by any significant sums because such cost or pricing data was inaccurate or incomplete or was not current as of the date set forth in the certificate applicable to such data, such price or price adjustment shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(g) Failure of the Contractor and the Contracting Officer to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

§ 18–3.807–5 Defective cost or pricing data.

Where any price to the Government, including profit or fee and including price adjustments, must be negotiated largely on the basis of cost or pricing data furnished by the contractor, it is essential that all data that might reasonably affect the price negotiations be disclosed and that such data be accurate, complete, and current. If an agreed price includes amounts which can only be attributed to erroneous or incomplete cost or pricing data, it is not a fair price and the resultant profits are not earned profits. Where negotiations are to be conducted on the basis of full disclosure, failure of one party to proceed on that basis undercuts full mutual assent to the price negotiated so that, in this sense, the price is not fully agreed to, and fairness warrants its adjustment. Paragraph (f) of the Contractor and Subcontractor Cost or Pricing Data clause set forth in § 18–3.807–4 is designed to give the Government in such a case an enforceable contract right to a price adjustment, that is, to a reduction in the price to what it demonstrably would have been if the contractor had not failed to disclose significant and reasonably available data or had not furnished defective data.

§ 18–3.807–6 Refusal to provide cost or pricing data.

(a) If cost or pricing data from the contractor is required to permit adequate analysis of the contractor's proposal in accordance with § 18–3.807–3 and the contractor has refused to provide such data, the contracting officer shall use those means available to him to attempt to secure such data. If the contractor persists in his refusal to provide necessary data, the contracting officer shall withhold making the award or price adjustment. In such event, he shall refer the procurement action to higher echelons of the procurement organization (see § 18–3.807–3(d)). Such referral shall include a complete statement of the attempts made to resolve the matter, including (1) steps taken to secure essential cost data, (2) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, (3) any assurances offered, such as agreements to adequately safeguard information furnished, and (4) a statement concerning the practicability of obtaining the supplies or services from another source of supply.

§ 18–3.807–7 Unacceptable substitutes for pricing negotiations.

A certificate of Current Cost or Pricing Data shall not be considered a substitute for examination and analysis of the contractor's proposal. Nor shall contracting officers rely on profit-limiting statutes as remedies for ineffective pricing.

§ 18–3.807–8 Evaluation and pricing of individual contracts.

Each contract shall be priced separately and independently, and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition neither prevents the negotiation of overhead and other rates applicable to several contracts during annual or other specific periods nor prohibits forward pricing agreements applicable to several contracts. A proposed price reduction under another contract or other contracts shall not, however, be used as an evaluation factor.

§ 18–3.807–9 Specified contingencies.

When a contract is to include a provision for adjustment of price upon the happening of a specified contingency (*e.g.*, escalation clauses, Government-furnished property clauses, tax clauses), the contract price should not include any amount on account of such contingency.

§ 18–3.807–10 Subcontracting considerations in cost analysis.

(a) The amount and quality of subcontracting may be a major factor influencing price. Since a large proportion of the procurement dollar is spent by prime contractors in subcontracting for work, raw materials, parts, and components, efficient purchasing practices by a contractor will contribute heavily toward efficient and economic production. While basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, and for subcontract prices and subcontract performance, the contracting officer must have adequate knowledge of these elements and their effect on prime contract prices. Therefore, contractors' "make-or-buy" programs and proposed subcontracts should be reviewed in accordance with Subpart 18–3.9 and the information derived from such review should be used in negotiating prime contract prices. Even when not specifically required by Subpart 18–3.9, the contracting officer should, where appropriate, elicit from the offeror or contractor information concerning:

(1) The purchasing and subcontract management practices of the prime contractor;

(2) The principal subsystems or components to be subcontracted and the contemplated subcontractors, including (i) the degree of competition obtained, (ii) cost or price analyses or price comparisons accomplished, including accurate, complete, and current cost or pricing data, and (iii) the extent of subcontract supervision;

(3) The types of subcontracts; i.e., firm fixed-price or other; and

(4) The estimated total extent of subcontracting, including procurement of purchased parts and materials.

(b) In the review of subcontracting, there should be assurance that the contractors obtain competition, if available, from qualified sources in their award of subcontracts to the extent consistent with the procurement of the required services or supplies. Contractors shall be required to undertake appropriate price analysis (see § 18–3.807–2(b)) in all significant subcontract transactions, and to undertake cost analysis (see § 18–3.807–2(c)) if competition is not available or does not yield reasonable subcontract prices.

(c) It is particularly important in negotiating revisions of prime contract prices under price redetermination contracts that there be substantial assurance that there was initial close pricing of subcontracts placed on a price redetermination or fixed-price incentive basis. Where the prime contract provides for price redetermination, contracting officers should be alert to the risk of establishing firm redetermined prime contract prices while a major subcontract is still subject to price redetermination and may eventually be redetermined at a price far lower than that ascribed to it in redetermining the prime contract price, with consequent profits to the contractor far in excess of those contemplated in the prime contract price negotiation. However, in some cases, it may be appropriate to negotiate firm contract prices even though the contractor has not yet established final subcontract prices, if the contracting officer can justify as reasonable the amount included for subcontracting, e.g., where fairly definite cost data on subcontract prices is available. In other cases, where certain subcontracts are subject to redetermination and available cost data on these subcontracts is highly indefinite but other circumstances require prompt negotiation of revised prime contract prices, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a provision substantially as follows:

> Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.
> (List subcontracts) (October 1963)

(d) In negotiating prime contracts where the award is not determined by adequate price competition and in consenting to cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees (target fees in the case of cost-plus-incentive-fee subcontracts) under such subcontracts never exceed—

(1) 10 percent of the estimated cost, exclusive of fee, in the case of any subcontract for experimental, developmental, or research work; or

(2) 7 percent of the estimated cost, exclusive of fee, in the case of any other subcontract;

unless the payment of higher fees is approved by the procurement officer. (For cost-plus-incentive-fee subcontracts, the maximum fees shall not exceed 15 percent in the case of experimental, developmental, or research work, or 10 percent for any other subcontract.) These limits should not be inserted in the prime contract because such action might tend to inflate fees customarily negotiated at lower rates.

§ 18–3.808 Profit or fee.

§ 18–3.808–1 General.

A fair and reasonable provision for profit or fee cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. Rather, the profit or fee should be first established as a dollar amount, after considering the factors set forth in this § 18–3.808. Therefore, where a fee is involved and it is necessary to determine the percentage relationship between the fee and the estimated cost of the contract in order to comply with administrative and statutory limitations on fees for cost-reimbursement type contracts, the percentage shall be determined only after the dollar amount of the fee has been established for negotiation purposes and the negotiation memorandum shall adequately reflect this process.

§ 18–3.808–2 Factors for determining fee or profit.

The factors set forth in paragraphs (a) through (i) below should be considered in determining profit or fee in all contracts, whether for supplies or services; for construction work; or for experimental, developmental, or research work; and whether of the fixed-price type or of the cost-reimbursement type unless otherwise specified in the particular factor. All of the following factors, as set forth in paragraphs (a) through (i) of this section, should be evaluated in the light of the basic policy set forth in § 18–3.801–1 which provides that supplies and services shall be procured from responsible sources at fair and reasonable prices calculated to result in the lowest overall cost to the Government.

(a) *Effect of competition.* When competition is effective and proposals are on a firm fixed-price basis, the contracting officer normally need not consider in detail the amount of estimated profit included in a price. When effective competition is lacking and in all cases where cost analysis is performed in accordance with § 18–3.807–2(c), the estimate for profit, target profit or fee, or the proposed fixed fee should be analyzed in the same manner as all other elements of price, evaluating the factors set forth in this § 18–3.808.

(b) *Degree of risk.* (1) The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all risk.

(2) Some cost-plus-a-fixed-fee contracts and task orders for research and development call for the delivery of prototypes or other "hardware." Other such contracts or task orders require only that the contractor exert his "best efforts" to deliver the required end item. Frequently this is because the contractor is not willing to assume the additional burden of incurring substantial cost overruns without additional fee in order to complete performance. When the contract calls for delivery of developed models in accordance with well-defined performance or design characteristics or a predetermined delivery schedule, or both, in contrast to an obligation only to exert his "best efforts" to develop and deliver such models, payment of the fee should be conditioned on performance in accordance with the contractor's obligation to deliver, and in such cases the contractor may be entitled to a larger fee both because of the risk inherent in his commitment and because of the successful completion of the work.

(c) *Nature of work to be performed.* A major consideration in the determination of the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed and any unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment, whether the caliber or class of engineer involved is that of an "ideaman," or whether the contractor is to be required by the contract to assign to the work unusually skilled talent.

(d) *Extent of government assistance.* NASA encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, or other assistance must be furnished to a contractor by the Government, such extraordinary assistance should have an influence in determining what constitutes a fair and reasonable profit or fee.

(e) *Extent of the contractor's investment.* The extent of a contractor's total investment (*i.e.*, both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profit.

(f) *Character of contractor's business.* Recognition must be given to the type of business normally carried on by the contractor, the complexity of manufacturing techniques, the rate of capital turnover, and the effect of each individual procurement upon such business. For example, where a contractor is engaged in an industry where the turnover of working capital is slow, generally the profit objective on individual contracts is higher than in those industries where the turnover is more rapid.

(g) *Contractor's performance.* In addition to the factors set forth in § 18–3.102, the contractor's past and present performance should be evaluated in such areas as quality of product, quality control, scrap and spoilage, efficiency in cost control (including need for and reasonableness of cost incurred), meeting performance schedules, timely compliance with contractual provisions, creative ability in product development (giving consideration to commercial potential of product), engineering (including inventive, design simplification, and development contributions), management of subcontract programs, management of Government property, and any unusual services furnished by the contractor. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(h) *Subcontracting.* (1) In negotiating the profit or fee, subcontracting as a factor shall be segregated for separate evaluation, particularly as it bears on the contractor's technical supervision and management responsibility, financial investment, and degree of risk, as outlined in § 18–3.808. The degree and nature of subcontract programs vary on a broad spectrum. While it is not possible to define the exact profit or fee treatment to be accorded each situation, the general guidelines in subparagraph (2) of this paragraph shall be taken into consideration.

(2) The evaluation of a contractor's subcontracting program should not consist merely of applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. A relatively large amount of subcontracting by itself need not result in negotiation of correspondingly lesser profit or fee since the character and circumstances of the subcontracting must be taken into account. Although purchased material and subcontracted work are usually properly included in the base upon which profit or fee is computed, instances may arise in which a significant portion or portions of a contract are subtracted in such a way that only a minimum amount of responsibility or risk remains with the prime contractor. In such case, in order to prevent unreasonable pyramiding of profit or fee, the amount of profit or fee attributable to the subcontracted work should be substantially less than where the contractor uses his own resources and retains substantial responsibility or risk. Of primary importance is the degree to which the subcontracting provides a better component or subsystem and lower costs, with timely performance (recognizing the distinction between the prime contractor who elects to buy rather than make in the interest of providing a better and less expensive component or subsystem than the prime contractor who

buys because he has no in-house capability) and in which the contractor assumes heavy managerial and technical effort, responsibility, and risk. Particular attention should be given to the contractor's managerial and technical effort, responsibility and risk with respect to subcontracts under major systems contracts where a substantial portion of total contract cost is attributable to subcontracting of major components or subsystems. Consideration must be given to the relationship which the prime contractor's estimated profit or fee on subcontracted work bears to his cost of placing and managing such subcontracted work.

(3) In establishing a contractor's fee or profit, favorable consideration shall be given to:

(i) The company's policies and procedures which energetically support Government Small Business and Labor Surplus Area Programs;

(ii) Any unusual efforts which the contractor displays in subcontracting with small business and labor surplus area concerns, particularly for developmental type work likely to result in later production opportunities; and

(iii) Effectiveness of the company in subcontracting with and furnishing assistance to such concerns, as compared to other comparable contractors. In this connection, it is the responsibility of the contracting officer to examine the contractor's past and present effectiveness and plans for seeking out qualified small business and labor surplus area concerns, and to require the contractor during negotiations to document his past, present, and planned performance in these areas.

(i) *Unrealistic estimates.* If records reveal that a contractor's actual costs are consistently lower than his estimated costs (indicating a practice of excessive estimates), and if the contractor refuses to provide what seems to be a reasonable estimate of costs, a lower profit or fee should be considered.

§ 18–3.808–4 Minimal fees or cost sharing arrangements.

In certain circumstances, as where experimental, developmental, or research work is attractive because of direct or potential commercial applications, consideration should be given to using a contract providing for only a nominal or token fee, or no fee, or on a cost-sharing basis.

§ 18–3.808–5 Fee limitation for experimental, developmental, or research work.

In connection with the administrative and statutory limitations on fixed fees set forth in § 18–3.302(2), the existence of the administrative limitation of 10 percent for research and development work should not prevent the negotiation of fixed fees up to the level of the statutory limitation of 15 percent in the appropriate circumstances. Such cases, however, shall be fully documented through factual support including specific details of prior experience with the contractor, the complexity of the work to be performed, and the details in connection with all of these factors. Contractors proposing such fees should be required to support their proposals in a similar manner.

§ 18–3.809 Audit as a pricing aid.

(a) *General.* Audit services should be utilized as a pricing aid by the contracting officer to the fullest extent appropriate when the dollar amount involved is sufficiently large, or special circumstances exist, to warrant the time and expense required for the particular type of advisory audit, special survey, or audit analysis of price or cost desired. Judicious use of audit services will expedite proper pricing. The determination as to the necessity of an audit report for pricing purposes is the responsibility of the contracting officer. When requesting audit services, the contracting officer shall state the purpose for which the report is to be used and define any specific areas of audit examination which should be given special attention.

(b) *Application.* Except for contracts containing retroactive price revision clauses, pricing techniques are concerned mainly with estimates of future costs. Therefore, audit reports for either retroactive or prospective pricing should not only establish costs accrued to a specific cutoff point for price proposal purposes but also should include cost trends and other available information which would be of assistance to the contracting officer in price negotiation. Such audit reports will serve a useful purpose in:

(1) The evaluation of contingency allowances, overhead allocations, purchasing management efficiency, and similar cost elements;

(2) Both the initial and subsequent pricing of contracts containing price revision clauses;

(3) Establishing limitations on costs and price revision adjustments; and

(4) Establishing negotiated overhead rates for cost-reimbursement type contracts.

(c) *Conditions for use.* Close coordination between audit and procurement personnel will assist in determining the necessity of special surveys relating to contractors' accounting or purchasing systems. Some of the conditions under which the contracting officer should consider the use of audit services include:

(1) Inadequate knowledge concerning the contractor's accounting policies, cost systems, or substantially changed methods or levels of operation;

(2) Previous unfavorable experience indicating doubtful reliability of the contractor's estimating, accounting, or purchasing methods;

(3) Procurement of a new product for which cost experience is lacking; and

(4) Contract performance requiring a substantial period of time.

§ 18–3.810 Exchange of information.

In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between NASA procurement offices and between NASA and other Government agencies, since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

§ 18–3.811 Record of negotiation.

At the conclusion of each negotiation of an initial or revised price, the negotiator shall promptly prepare a memorandum setting forth the principal elements of the contract negotiations for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the price, estimated costs and fee, and other terms of the contract. In this connection, see Subpart 18–50.1 of this chapter, which prescribes the type of information to be included.

§ 18–3.813 Pre-contract planning and startup and other nonrecurring costs.

(a) Estimates of pre-contract planning and startup costs include such costs as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all nonrecurring costs for the purpose of obtaining the initial contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become in effect, a sole source for follow-on procurements (including spare parts or other support items).

(c) When it is anticipated that such costs will be a significant factor in the evaluation of proposals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(1) An estimate of the total of such costs;

(2) The extent to which these costs are included in the proposed price; and

(3) The intent to absorb, or plan for recovery of, any remaining costs. When entering into a contract with an offeror who has indicated that he intends to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Government in any future noncompetitive procurement or other pricing action.

§ 18–3.850 Initiation of the procurement request.

(a) The technical office requiring a contract to be made shall initiate the procurement request (NASA Form 404, or similar form). The request shall contain a proposed statement of the work to be performed and an estimate of

the dollar amount of the procurement. Background information, including documentation of any previous discussions by technical personnel with potential contractors relating to the work, also will be included. If the proposed procurement will involve access to classified information, NASA Form 446, "Request for Contractor Clearance," must be completed in accordance with NASA Management Instruction 24–3–1. If the procurement is to be subject to the NASA Financial Management Reporting System (see NASA Management Instruction 6–2–4A, and § 18–7.204–56 of this Chapter), the number of copies of NASA Form 533 to be required will be stated. After approval by responsible technical officials, any request involving an item of supply will be processed through the installation property officer for possible utilization of available excess personal property in accordance with NASA Management Instructions 20–4–2 and 20–4–5. When personal property is not available from these sources to meet the requirements of the procurement request, certification of nonavailability will be indicated thereon by the property officer. The procurement request will then be routed through budgetary channels (and fiscal, where required), for coordination as to availability of funds and sent to the procurement office for procurement action. Except for processing NASA Form 446, no action shall be taken by the procurement office toward effecting the procurement until a properly approved procurement request has been received. Where it is determined by the technical office initiating the procurement request that data (as defined in § 18–9.201 of this chapter) is to be furnished by the contractor in the performance of the contract, the procurement request will contain a statement as to the types of data that the contractor will be required to furnish. It is especially important that where follow-on procurement is contemplated, consideration be given to obtaining data in sufficient detail to permit competitive reprocurement. In any event, the contracting officer will review the procurement request to ascertain whether or not consideration has been given to the requirement for the furnishing of data by the contractor and will discuss this matter with the technical office in any instance where it is apparent that proper consideration has not been given to this requirement.

(b) In subinitting procurement requests, technical personnel responsible should allow a reasonable period for :

(1) Preparation and issuance of requests for proposals;

(2) Preparation of proposals by contractors;

(3) Contract negotiation and preparation; and

(4) Timely contract performance.

Failure to do so may result in delayed performance by the contractor and in increased costs to the Government. Accordingly, the issuance of procurement requests on an urgent basis or with unrealistic delivery or performance schedules should be avoided.

(c) Only a contracting officer may bind the Government to a contract or orally direct or authorize a contractor to proceed with work. For this reason, technical discussions with potential contractors shall be conducted in such a manner as to preclude any assumption on the part of potential contractors that a commitment on behalf of the Government has been made.

§ 18–3.851 Review of the procurement request and preparation of statements of work.

The procurement request shall be assigned within the procurement office to a negotiator who will be responsible to the contracting officer for handling the business aspects of the transaction. The negotiator will review the procurement request (a) for compliance with the property utilization requirements set forth in NASA Management Instructions 20–4–2 and 20–4–5; and (b), in conjunction with the initiator of the request, will make every effort to clarify uncertain requirements or correct inconsistencies which might cause contractors to take exceptions to the statement of work or to include unwarranted contingency charges. The drafting of statements of work and specifications is the primary responsibility of technical project personnel. However, procurement personnel, reliability and quality assurance personnel, and legal personnel, as appropriate, will participate in the preparation of statements of work and specifications at an early stage to facilitate timely review and assistance.

§ 18–3.852 Preparation and approval of procurement plans.

Although adequate planning prior to procurement action is always a prerequisite, the preparation of a more formal procurement plan is required in certain cases. A description of what such a procurement plan should contain and the situations in which preparation and approval of such a plan are required are set forth in §§ 18–3.852–1 through 18–3.852–5.

§ 18–3.852–1 Contents of the procurement plan.

(a) A procurement plan is a detailed outline of the method by which the contracting officer expects to accomplish the procurement task. The plan is an administrative tool designed to enable the contracting officer to plan effectively for the placement and accomplishment of assigned procurements by analyzing the requirement for, and determining the method to be used in, placing the procurement. It also furnishes justification for the contemplated method of procurement for use in connection with the review and approval of higher authority, when applicable.

(b) A procurement plan shall contain:

(1) A description of the proposed procurement, including identification of the related program or project; the date, and authority project approval was granted; and the office that will be responsible for technical monitoring of the contract.

(2) A comprehensive list of known sources prepared in accordance with § 18–3.802–2 and a discussion of the competitive situation believed to exist. When it is not intended to solicit all known sources, the procurement plan should indicate those sources to be solicited and the basis for their selection. When it is intended to solicit a proposal from only one source the procurement plan will be accompanied by the document prescribed in § 18–3.852–2.

(3) A recommendation as to the type of contract that should be used and the reasons for the choice. When applicable, a copy of the Determination and Findings under 10 U.S.C. 2306(c), prepared in accordance with § 18–3.304(d), should be attached.

(4) A recommendation as to which method of evaluating proposals set forth in § 18–3.804 should be utilized, and the reasons for this choice, including any special problems believed to exist in making the evaluation, except that in the case of a procurement plan required to be approved by the Director of a field installation, pursuant to § 18–3.852–5 (a)(2), the plan will contain requirements for a Source Evaluation Board.

(5) A realistic time schedule for completing each major phase of the procurement action, stated in terms of the length of time allotted to each phase.

(6) A statement setting forth facts and circumstances that clearly and convincingly establish why formal advertising is neither feasible nor practicable for the particular procurement, and a complete statement of the facts and circumstances which are clearly illustrative of the conditions which authorize negotiations under the authority being used in the particular instance, and a copy of the required Determination and Findings under 10 U.S.C. 2304(a) (See Subpart 18–3.3).

(7) Provisions for reliability assurance including a summary of reliability program requirements as set forth in Subpart 18–1.51 of this chapter.

(8) A recommendation as to whether an oral briefing of prospective contractors should be held, and whether this briefing should take place before or after the issuance of requests for proposals.

(9) A statement as to whether or not it is probable that the Government will desire to make follow-on procurements of the item being procured at this time and, if so, a requirement for the kinds and amounts of data that the contractor will be required to furnish. (See Subpart 18–9.2 of this chapter.) When a follow-on procurement is contemplated and manufacturing data will not be required, the procurement plan shall contain a statement setting forth the reasons why such data will not be required.

(10) Any other pertinent data that would be helpful to the approving authority in appraising the plan for carrying out the procurement.

§ 18–3.852–2 Justification for noncompetitive procurement.

(a) *Preparation.* Procurement plans which contemplate noncompetitive negotiation shall be accompanied with a separate document entitled "Justification for Noncompetitive Procurement." This separate document shall:

(1) Fully express the circumstances which operate to make competitive negotiation impractical or not feasible;

(2) Explain with particularity the exclusive or predominant capability of the selected contractor to meet the requirements of the procurement; and

(3) Contain, in the first sentence of the document, an appropriate recommendation (e.g., "I recommend that we negotiate with the _____ only (name of company) for the detailed documentation and fabrication of _____."). (Item being procured)

A "Justification for Noncompetitive Procurement" shall be submitted in accordance with this chapter regardless of which exception of 10 U.S.C. 2304(a) is being cited and relied on as authority to negotiate. Each justification shall reflect the degree of consideration which has been given to other firms in the field and cite reasons why they lack the particular capability which the proposed contractor evidences.

(b) *Considerations.* The following factors should be considered in preparing the justification:

(1) What capability does the contractor have which is important to the specific effort and makes him clearly more desirable than another firm in the same general field?

(2) What prior experience of a highly specialized nature does he possess which is vital to the proposed effort?

(3) What facilities and test equipment does he have which are specialized and vital to the effort?

(4) Does he have a substantial investment of some kind which would have to be duplicated at Government expense by another firm entering the field?

(5) If schedules are involved, why are they critical and why can the selected contractor best meet them?

(6) If lack of drawings or specifications is a guiding factor, why is the proposed contractor best able to perform under these conditions? Why are drawings and specifications lacking? What is the lead-time required to get drawings and specifications suitable for competition?

(7) Are Government-owned facilities involved?

(8) Is the effort a continuation of previous effort performed by the proposed contractor?

(9) Does the proposed contractor have personnel considered predominant experts in the particular field?

(c) *Approval.* The Justification shall be approved as follows:

(1) If the contract is not to exceed $1,000,000 such Justification shall be prepared as a recommendation of the chief of the cognizant technical division and approved by the procurement officer of the installation.

(2) If the contract is to exceed $1,000,000 but not to exceed $5,000,000, the "Justification" shall be approved by the Director of the installation.

(3) If the contract will exceed $5,000,000, the "Justification for Noncompetitive Procurement" shall be signed by the Director of the field installation and shall contain additional signature blocks for the approval of the Administrator and for the concurrences of the Deputy Administrator and the Associate Administrator. The submitting installation will ensure that sufficient space is left on the document for concurrences by the Office of Procurement, Deputy Associate Administrator for Industry Affairs, and cognizant Headquarters Program Offices. The justification shall be forwarded with the procurement plan to the Administrator through the Director of Procurement.

§ 18–3.852–3 Requirement for preparation of procurement plans.

On each negotiated procurement which it is estimated will exceed $100,000, the NASA contracting officer shall prepare a procurement plan with the advice and assistance of the cognizant technical division. Such plan shall be prepared prior to solicitation of proposals. Field installations may prescribe the preparation of a procurement plan for negotiated procurements that are not anticipated to exceed $100,000.

§ 18–3.852–4 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1,000,000 is involved, as defined in Part 18–1.51, of this chapter reliability personnel at the field installation involved shall assist in the preparation of the procurement plan with respect to arrangements to be made for reliability monitoring. In the absence of such reliability personnel, the field installation shall seek the advice and assistance of the Director of Reliability and Quality Assurance, NASA Headquarters, or his designee, in the preparation of procurement plans.

§ 18–3.852–5 Approval of procurement plans.

(a) Procurement plans require the following approval:

(1) If the contract is not anticipated to exceed $1,000,000, the procurement plan shall be approved by the procurement officer of the installation, after concurrence by the chief of the cognizant technical division.

(2) If the contract is anticipated to exceed $1,000,000 but not to exceed $5,000,000, the procurement plan shall be approved by the Director of the field installation. If the Director of the field installation considers that a Source Evaluation Board is not appropriate for a particular procurement, he may waive the requirement for such a board, provided that he does so in writing with a statement of his reasons for the waiver. Where factors exist which make review at Headquarters desirable, the Director of the field installation may forward the procurement plan with his recommendation to NASA Headquarters for approval in accordance with subparagraph (3) of this paragraph. Referral of procurement plans to Headquarters is desirable where technical responsibility remains in Headquarters.

(3) If the contract is anticipated to exceed $5,000,000 or is for services and the estimated cost of such services over a 3-year period is expected to exceed $5,000,000, the procurement plan shall be forwarded by the Director of the field installation, with his concurrence in the plan, to the Associate Administrator for approval via the Director of Procurement. The Director of Procurement will refer the procurement plan for review simultaneously to the Director of the cognizant Headquarters Program Office(s), to the General Counsel, to the Deputy Associate Administrator for Programming, and to any other office appropriate under the circumstances of the particular case. After receipt of comments and recommendations from the reviewing offices, the Director of Procurement will revise, modify, or concur in the procurement plan, as necessary, and forward it to the Associate Administrator for approval.

(b) In the case of contracts for feasibility studies or preliminary work where it is likely that the source selected will receive other contracts for later phases of the same project, for purposes of applying the provisions of paragraph (a) of this section, the dollar amount of such contracts shall be considered to be the total dollar amount estimated for the entire project rather than the amount estimated for the initial contract.

§ 18–3.852–6 Requests for proposals.

For requests for proposals prepared pursuant to a procurement plan approved under § 18–3.852–5(a)(3), see § 18–3.802–3(b).

§ 18–3.853 Award and preparation of the contract.

When negotiations have been completed, a contract embodying the agreement will be prepared by the procurement office for execution by the contracting officer and the contractor.

§ 18–3.854 Release of contract award information.

§ 18–3.854–1 General.

Because of public and Congressional interest in NASA contracts, a particular effort must be made to furnish information to the public and Congress concerning firms which receive contract awards and their geographical locations.

§ 18–3.854–2 Definitive contracts.

Contracts requiring approval by the Director of Procurement, in accordance with Subpart 18–50.1 of this chapter, will not be distributed, or information given to any source outside of NASA that the contract has been approved, until 24 hours after the Assistant Administrator

for Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

§ 18–3.854–3 Letter contracts.

(a) *Policy.* Notification of the issuance of letter contracts shall be furnished immediately to the Assistant Administrator for Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, in accordance with the procedures in paragraph (b) of this section, when:

(1) It is estimated that the total amount of the definitive contract will exceed $50,000; or

(2) It is estimated that the total amount of the definitized supplemental agreement will exceed $50,000 (where a letter contract initiates additional work or services to be definitized by a supplemental agreement under an existing contract).

(b) *Procedures.*—(1) *Contracting offices.* When a proposed letter contract as described above has been signed by the contracting officer, the contracting office will furnish to the installation Public Information Office, at the time the letter contract is transmitted to the contractor for signature, the following information:

(i) Date and hour letter contract is transmitted to contractor;

(ii) Whether the letter contract initiates a new contract or additional work or services under an existing contract;

(iii) Dollar amount authorized for the letter contract and estimated total cost of the contract or supplemental agreement;

(iv) Name and address of the contractor;

(v) Location where the work is to be performed, if known; and

(vi) Brief description of the work, including identification of the program and project.

(2) *Public information office.* Upon receipt of the information described in subparagraph (1) of this paragraph, the installation Public Information Office will transmit the information immediately, by TWX or more expeditious means (if appropriate), to the Assistant Administrator for Legislative Affairs and the Assistant Administrator for Public Affairs, NASA Headquarters. The information will not be otherwise released by the installation Public Information Office until clearance has been received from NASA Headquarters.

§ 18–3.854–4 Unsuccessful offerors.

For releasing information to unsuccessful offerors, see § 18–3.106–3.

Subpart 18–3.9—Subcontracting Policies and Procedures

§ 18–3.900 Scope of subpart.

This subpart sets forth policies and procedures for the evaluation, review, and approval of contractors' "make-or-buy" programs, purchasing systems, and proposed subcontracts.

§ 18–3.901 General.

(a) Information as to the contractor's "make-or-buy" program, purchasing system, and proposed subcontracts may be important to:

(1) Negotiation of reasonable contract prices;

(2) Assurance of satisfactory contract performance; or

(3) Carrying out of Government policies regarding small business (see Subpart 18–1.7 of this chapter), labor surplus areas, acquisition and use of Government facilities, or other policies which may be appropriate to the particular procurement.

Therefore, Government surveillance of contractors' "make-or-buy" programs and proposed subcontracts is required, as set forth in this Subpart. Where "make-or-buy" decisions and subcontracting will have a substantial impact on any of the above-mentioned factors, the contractor's "make-or-buy" program and subcontracting should, to the extent practicable, be evaluated and agreed upon during negotiations.

(b) The subcontracting policies and procedures in this Subpart should generally be applied to those procurements where (1) the item, system, or work is complex, the dollar value is substantial, or competition is restricted, and (2) either (i) a cost-reimbursement, price redetermination, or incentive type contract is to be used, or (ii) "make-or-buy" decisions are expected to have a substantial impact on negotiations.

§ 18–3.902 "Make-or-buy" program.

§ 18–3.902–1 General.

(a) A "make-or-buy" program is that part of a contractor's written plan for the development or production of an end item which outlines the subsystems and major components, assemblies, subassemblies, and parts to be manufactured (including testing, treating, and assembling) in its own facilities and those which will be obtained elsewhere by subcontract. A "make" item is any item produced, or work performed, by the contractor or his affiliate, subsidiary, or division.

(b) (1) Where the nature of the procurement is such that, in view of the factors referred to in § 18–3.901(b), review of the "make-or-buy" program is appropriate or is otherwise considered essential, the prospective contractor will be required to submit his proposed "make-or-buy" program, together with sufficient data to permit the contracting officer to evaluate such factors in paragraph (e) of this section as are pertinent.

(2) At the time a request for proposal is issued, contracting officers will request potential suppliers to furnish "make-or-buy" programs on all negotiated procurements, except as otherwise provided in subparagraph (3), (4), or (5) of this paragraph.

(3) A "make-or-buy" program will not be required when a proposed contract has a total estimated cost of less than $1,000,000, unless the contracting officer specifically determines that a "make-or-buy" program is appropriate.

(4) Except where their performance involves significant fabrication of hardware items, research and development contracts are not subject to the "make-or-buy" requirements of this Subpart.

(5) A "make-or-buy" program will not be required if the contracting officer determines that none of the factors in § 18–3.901(b) is applicable.

(6) The requirement for submission of a "make-or-buy" program is an important factor to be considered in establishing a realistic date for submission of proposals.

(c) The contractor will be informed that the program he submits should be confined to important items which, because of their complexity, quantity, cost, or requirement for additional Government facilities, normally would require company management review of the "make-or-buy" decision. "Detail parts" or "off-the-shelf" items will not be incorporated in a "make-or-buy" program unless their potential impact on program or schedule makes their inclusion necessary. If the design status of the end item being procured is not sufficiently advanced to permit accurate precontract identification of all items that may be subject to "make-or-buy" decisions, the contractor shall be notified that such items must be submitted, when identifiable, under the terms of the contract clause entitled "Changes to Make-or-Buy Program."

(d) The contractor will submit, with his proposal, a "make-or-buy" program of important items, including, in addition to information required by paragraph (b) (1) of this section:

(1) A description by which each such item can be readily identified;

(2) A recommendation to make or buy the item or defer the decision, and the reasons therefor;

(3) When feasible, the names of proposed subcontractors, including the specific division, plant, and plant location in which the subcontractor proposes to perform the work; and

(4) The important items to be made by the contractor, including a designation of the specific division, plant, and plant location in which the contractor proposes to perform the work.

(e) "Make-or-buy" programs will be evaluated and agreed upon by the contractor and the contracting officer at the earliest practicable time during negotiations. In reviewing the "make-or-buy" program during negotiations, the effect of the following factors on the interests of the Government shall be considered:

(1) The effect of the contractor's plan to make or buy, as the case may be, on price, quality, delivery, and performance;

(2) Whether the contractor plans to broaden his base of subcontractors through competition;

(3) Whether the contractor has properly considered the competence, abilities, experience, and capacities available within other firms;

(4) Whether small business and labor surplus area concerns are given an equitable opportunity to compete for subcontracts;

(5) Whether the contractor or major subcontractors propose to do work in plant, the nature of which differs significantly from their normal in-plant operations or for which they are not historically suited;

(6) Whether production of the item or performance of the work will create a requirement, either directly or indirectly, for additional facilities to be furnished by the Government, or for the continued use of Government-owned facilities by the contractor or by subcontractors;

(7) Whether the contractor proposes to ask the Government to furnish additional facilities to do a type of work in plant for which there is capacity elsewhere which is competitive in quality, delivery, and overall cost, and is acceptable as a source to the contractor;

(8) Whether the item or work has been subcontracted on this or previous contracts; and

(9) Other factors, such as the nature of the item, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and material.

(f) The contracting officer will review the "make-or-buy" program to determine if all appropriate items are included and if it contains items that should be deleted because of their relatively minor importance. In all considerations relative to a "make-or-buy" program, the contracting officer will obtain the advice and assistance of all appropriate personnel (including technical, pricing, and small business personnel) whose knowledge would contribute to the adequacy of all facets of the review. Before agreeing to a "make-or-buy" program (or consenting to any changes therein which, in the opinion of the contracting officer, would reduce the anticipated participation of small business), the contracting officer shall invite the advice and counsel of the SBA by permitting SBA representatives regularly assigned to the installation to review all pertinent facts and make recommendations thereon. Such review should be concurrent with the review by the contracting officer. Where urgent circumstances do not permit such a current review, or where SBA fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and shall furnish a copy to the SBA representative.

(g) Proposed "make" items shall not be agreed to when the products or service under consideration:

(1) Are not regularly manufactured or provided by the contractor, and in the opinion of the contracting officer are available—quality, quantity, delivery, and other essential factors considered—from other firms at prices no higher than if the contractor should make or provide the product or service; or

(2) Are regularly manufactured or provided by the contractor, and are available—quality, quantity, delivery, and other essential factors considered—from other firms at prices lower than if the contractor should make or provide the product or services:

Provided, That such items may be agreed to, notwithstanding subparagraphs (1) and (2) of this paragraph, if in the opinion of the contracting officer the overall cost of the contract to the Government would be increased if the item were "bought."

(h) After agreement on the program is reached, the contracting officer shall notify the contractor of the Government's approval of the program and shall inform the contractor of any requirement for further review during performance of the contract. For example, if follow-on procurement occurs, the contracting officer and the contractor will review the existing "make-or-buy" program to determine whether it should be revised.

(i) The following clause shall be incorporated in all cost reimbursement, price redetermination, or incentive type contracts as to which a "make-or-buy" program has been agreed upon:

CHANGES TO MAKE-OR-BUY PROGRAM (MARCH 1963)

The Contractor agrees to perform this contract in accordance with the "make-or-buy" program attached to this contract except as hereinafter provided. If the Contractor desires to change the "make-or-buy" program, he shall notify the Contracting Officer in writing of the proposed change reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work or any "make" item in the "make-or-buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later additions to the "make-or-buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. The Contractor shall not, without the written consent of the Contracting Officer, make changes or additions to the program: *Provided,* That in his discretion the Contracting Officer may ratify in writing any changes or additions and such ratification shall constitute the consent of the Contracting Officer required by this clause. The "make-or-buy" program attached to this contract shall be deemed to be modified in accordance with the written consent or ratification by the Contracting Officer.

(j) On applicable contracts, the office responsible for performing contract administration will establish a procedure with the contractor to ensure timely compliance with the terms of the contract clause. This procedure will include provisions for processing changes to the established "make-or-buy" program and for obtaining "make-or-buy" decisions for items reserved for deferred decisions or unidentified at the time of contract negotiation. The responsible contract administration officer will (1) receive requests from the contractor for changes in, or additions to, the established "make-or-buy" structure, (2) evaluate the contractor's proposals, and (3) forward them, with his recommendations, to the appropriate NASA contracting officer. When reviewing proposed changes in, or additions to, the established "make-or-buy" program, the NASA contracting officer shall consult with appropriate personnel, as provided in paragraph (f) of this section.

(k) Approval of the contractor's purchasing system shall not constitute approval of the "make-or-buy" program where the latter is required.

(l) When a "make-or-buy" program is agreed upon with a contractor, or there are changes or additions to a "make-or-buy" program, the consideration given each item on such program will be documented in the contract file. If a contract (including supplemental agreements for new procurement), except those specifically exempted by paragraph (b) of this section, does not include the clause entitled "Changes to Make-or-Buy Program," the contracting officer will document the contract file with a written statement of facts to sustain and make clear the appropriateness of the determination not to include the clause. Such determination will be based on one of the following:

(1) The contract is on a firm fixed-price basis;

(2) The contract is not exempt but there are no items which can be identified as requiring a "make-or-buy" program as defined in paragraph (a) of this section; or

(3) A deviation has been approved pursuant to § 18–1.109.

§ 18–3.902–2 Price adjustments.

(a) There may be cases where it is proper to agree that an item of significant value will be "bought" even though it would usually be more economical to have it "made" or vice versa. For instance, the contractor may have a unique capability for low-cost manufacture of a substantial component but his capacity may already be full during the period necessary for contract performance, so the component must be subcontracted. Therefore, the agreed-upon "make-or-buy" program may specifically call for what would usually be the more costly treatment of the item and the consequent higher costs may be explicitly recognized in establishing the best obtainable contract price. Unforeseen changes in the circumstances, however, may arise during contract performance and may induce the contractor to propose changing the item from "buy" to "make" (or vice versa). If such a change is made, the element of the contract price which was intended to compensate the contractor for the higher costs flowing from the initial "make-or-buy" decision will instead constitute windfall profits to the contractor and unwarranted costs to the Government.

(b) In procurements where the prospective contractor's "make-or-buy" program is reviewed pursuant to § 18–3.902, if a situation of the kind described in paragraph (a) of this section obtains, the clause set forth below shall be included in the contract (unless it is a cost-reimbursement type contract) and any "make-or-buy" items of the kind described in paragraph (a) of this section shall be specifically designated in the schedule (or elsewhere in the contract)

both as being either a "make" item or a "buy" item and as being subject to this clause.

PRICE ADJUSTMENT FOR MAKE-OR-BUY CHANGES (MARCH, 1963)

This clause applies only to items that are designated elsewhere in the contract as being "make" items or "buy" items subject to this clause. If the Contractor desires to "make" any designated "buy" item or to "buy" any designated "make" item, he will give written notice to the Contracting Officer of the proposed change reasonably in advance and will include significant and reasonably available cost and pricing data in sufficient detail to permit evaluation of the proposed change. Promptly thereafter, if the Contractor proceeds with the change, the Contractor and the Contracting Officer will negotiate an equitable reduction in the contract price to reflect any decrease in costs which should reasonably result from the change, and the contract will be modified in writing accordingly. Failure to agree on an equitable reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

§ 18–3.902–50 Special considerations research and development contracts.

Research and development contracts shall, when source selection has been substantially predicated upon the possession by a given contractor of special capabilities, as represented by either key personnel or facilities, contain a schedule setting forth the designated personnel and facilities and the following clause shall be incorporated in such contracts:

KEY PERSONNEL AND FACILITIES (MARCH 1963)

The personnel and/or facilities specified in the schedule attached to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals or facilities to other programs the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: *Provided*, That the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The schedule attached to this contract may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

§ 18–3.903 Review of subcontracting and contractor's purchasing systems.

Examination of the contractor's purchasing system and plans for subcontracting, review of proposed subcontract sources and prices in the light of the factors indicated in § 18–3.901, and discussions with the contractor to bring about any adjustments which may be needed to clear the way for formal subcontract approval should generally be accomplished as part of the negotiation of the prime contract. Any resulting purchasing system approvals will be granted in accordance with § 18–3.903–3.

§ 18–3.903–1 Contract clauses.

(a) The "Subcontracts" clauses, covering Government consent to subcontracts, are set forth in this chapter as follows:

(1) For fixed-price supply contracts which include a price redetermination or incentive provision, in § 18–7.104–23(a) of this chapter;

(2) For cost-reimbursement type supply contracts, in § 18–7.203–8 of this chapter;

(3) For fixed-price research and development contracts which include a price redetermination or incentive provision, in § 18–7.303–12 of this chapter;

(4) For cost-reimbursement type research and development contracts, § 18–7.402–8 of this chapter; and

(5) For cost-reimbursement type research and development contracts with nonprofit institutions (including educational institutions), § 18–7.451–8 of this chapter.

(b) § 18–7.104–23(b) sets forth a subcontract clause which may be used in fixed-price supply contracts which do not include a price redetermination or incentive provision. Such clause may also be used in fixed-price research and development contracts which do not include a price redetermination or incentive provision (see § 18–7.303–12 of this chapter).

§ 18–3.903–2 Consent to subcontracts.

(a) The contracting officer's consent to subcontracts, required by the subcontract clause set forth in the contract, shall be accorded by individual consent on a subcontract-by-subcontract basis. However, where the contractor's purchasing system has been approved, in whole or in part, such consent is not required for subcontracts within the scope of such approval, except in the case of cost-reimbursement type contracts containing one of the contract clauses set forth in § 18–7.203–8, § 18–7.402–8, or § 18–7.451–8 of this chapter; individual consent cannot be waived with respect to those types of subcontracts for which individual consent is specifically required to be obtained pursuant to such clauses.

(b) The purposes of subcontract consent requirements are usually best served if review and analysis of the contractor's purchasing system and of his proposed subcontracts are carried out in conjunction with negotiation of the prime contract (and concurrently with any review of the contractor's "make-or-buy" program as required by § 18–3.902). Although consent to subcontracts cannot always be formally accomplished prior to execution of the prime contract(since definitive subcontracts are not generally entered into until after execution of the prime), the review, analysis, and discussion leading up to such formal consent should, where feasible, be conducted during the negotiation process.

(c) Purchases by a contractor from General Services Administration supply sources under a written authorization by the contracting officer (see § 18–5.906 of this chapter) shall be treated as having been made with the consent of the contracting officer.

§ 18–3.903–3 Approval of purchasing system.

(a) The effectiveness of a potential contractor's purchasing system and his system for management of subcontracts will be regarded as one of the essential criteria in determining responsibility pursuant to § 18–1.903 of this chapter. Performance during the course of a contract, in the areas of purchasing and subcontract management, will be a relevant consideration in determining future awards. When an award is contemplated, the NASA contracting officer shall assure himself as to the adequacy of a contractor's purchasing system and subcontractor management either by reference to a survey previously conducted or by a review in accordance with the minimum standards prescribed in § 18–3.903–3(g) to the extent appropriate in the light of the contractor's proven procurement ability and the dollar value of the proposed contract.

(b) The Director of Procurement will establish a list of major contractors whose purchasing systems will be surveyed, and he will be responsible for directing the accomplishment of such surveys. Normally, performance of surveys will be assigned to a field installation, taking into consideration such factors as availability and qualifications of personnel, dollar volume of contracts with the contractor, and location of facilities to be surveyed. When unusual or special problems are expected or known to exist, the Director of Procurement may elect to have representatives of the Office of Procurement perform or participate in the survey. Selection of a contractor to be surveyed will be based on the dollar volume of current and anticipated contracts with NASA and the factors set forth in § 18–3.901(b).

(c) Procurement officers desiring to have a contractor's purchasing system approved by NASA shall forward a request for such approval to the Director of Procurement with appropriate justification therefor. The Director of Procurement will notify the procurement office whether or not the recommended contractor's purchasing system will be surveyed and, if the survey is to be accomplished, he will also notify other procurement officers of such action.

(d) Prior to the initiation of a survey, the Director of Procurement will ascertain whether another agency of the Government has surveyed the particular contractor's purchasing system. Where such a survey has been conducted, the agency conducting the survey will be requested to furnish NASA with a copy of the survey and the results thereof (including any updating accomplished). Maximum use shall be made of such evaluation to determine the need for further action by NASA and to preclude needless multiplicity of surveys.

(e) A list of those contractors who have had their purchasing systems approved and those to be reviewed by the Director of Procurement, as well as those contractors who have had their purchasing systems approved by other Government agencies where such approvals are to be used by NASA, will be maintained

by the Office of Procurement and distributed to all procurement offices.

(f) A survey and approval of a contractor's purchasing system, as contemplated by this § 18–3.903–3, will not be made in conjunction with the review established by § 18–3.903. The survey and approval for individual contracts prescribed by this paragraph will be a part of the continuing systems survey which relates to the contractor's performance under all NASA contracts.

(g) A survey of a contractor's purchasing system shall include a review of such factors as:

(1) The degree of competition obtained by the contractor's purchasing methods (competition implies not only the solicitation of a sufficient number of sources supplemented by procedures calling for continuing exploration of potential new sources, but also the establishment of procedures providing for all other elements of free and open competition. Government experience has demonstrated that notification to unsuccessful bidders of awards of contracts on which they bid, of the names of the successful bidders, and, to the extent feasible, of the factors upon which selection and rejection were based, tends to develop more responsive bidding and minimizes the discouragement of potential sources because of failure to receive an award);

(2) The contractor's pricing policies and techniques, including, when necessary, his methods of obtaining current, complete, and accurate cost and pricing data and his use of available techniques, such as price, cost, and value analysis;

(3) The contractor's method of evaluating subcontractors' responsibility, including provision for continuing evaluation of existing subcontractors and the development of additional sources;

(4) The extent to which the purchasing system is consistent with any contract requirements covering small business and labor surplus area concerns;

(5) The treatment accorded affiliates of the contractor or other concerns having close working arrangements with the contractor;

(6) The effectiveness of the contractor's subcontract management, including, but not limited to, the extent to which the contractor obtains assurance that his principal subcontractors apply sound pricing practices and a satisfactory purchasing system in dealing with lower-tier subcontractors and the extent to which coordination with subcontractors is effected to assure rigid adherence to quality standards and maintenance of required delivery schedules;

(7) Types of contracts used;

(8) The extent to which the contractor's purchasing department is integrated within the contractor's operations and whether adequate coordination exists with other departments, particularly engineering, accounting, and estimating; and

(9) The contractor's procurement policies and procedures pertaining to such items as "make-or-buy" program, control of property, administration of subcontracts, etc.

(h) Approval of a contractor's purchasing system may be unqualified or may be limited. For example, the purchasing system may be approved except for subcontracts in excess of a stated amount or except for subcontracts for stated work which is of such critical nature that extraordinary Government surveillance is called for. (Or it may be decided to either raise or lower the dollar limitation on subcontracts to be submitted for contracting officer consent as provided for in § 18–3.903–4 or to retain the contractually stated limitation.) In no case shall approval of the contractor's purchasing system waive the requirement for consenting to individual subcontracts under cost-reimbursement type contracts where such individual consent is required by the Subcontracts clause contained in the contract (see § 18–3.903–2(a)).

(i) Upon completion of the survey and evaluation of the results thereof, the contractor shall be notified in writing of the conclusions developed, recommendations for resolution of any discovered deficiencies, and any limitations on the approval. The notice shall state that the approval does not (1) relieve the prime contractor of any of his obligations under the contract, (2) restrict the Government from subsequently withdrawing the approval in whole or in part, or (3) cover any changes of a material nature which the contractor may subsequently make in his purchasing system.

(j) After approval of the contractor's purchasing system, periodic examination of the contractor's operations under such system shall be conducted regularly to determine whether any substantial changes in procedures, initiated by the contractor or as a result of recommendations by the Government, have occurred, as well as to evaluate the contractor's performance under the purchasing system.

(k) Surveys of contractors' purchasing systems and the results thereof (including periodic updatings as contemplated by paragraph (j) of this section) conducted by NASA, as well as those conducted by other Government agencies that are being utilized by NASA, shall be distributed to all procurement offices.

§ 18–3.903–4 Review of individual subcontracts.

(a) In reviewing or consenting to individual subcontracts, the contracting officer should give appropriate consideration to the following:

(1) Whether the decision to enter into the proposed subcontract is consistent with the contractor's approved "make-or-buy" program, if any (see § 18–3.902);

(2) Whether the proposed subcontract will require the use of Government-furnished facilities;

(3) The responsibility of the proposed subcontractor (§ 18–1.906 of this chapter);

(4) Basis for selecting proposed subcontractor, including the degree of competition obtained;

(5) Cost or price analysis or price comparisons accomplished, with particular attention to whether cost or pricing data is current, complete, and correct;

(6) Extent of subcontract supervision;

(7) Type of contract used (see § 18–3.400);

(8) Estimated total extent of subcontracting, including procurement of parts and materials; and

(9) The extent to which the prime contractor has assured the adequacy of the subcontractor's purchasing system.

(b) In reviewing subcontracts, careful and thorough evaluation is particularly necessary when:

(1) The prime contractor's purchasing system or performance thereunder is considered inadequate;

(2) Subcontracts are for items for which there is no competition or for which the proposed prices appear unreasonable;

(3) Close working arrangements or business or ownership affiliations exist between the prime and the subcontractor which may preclude the free use of competition or result in higher subcontract prices than would otherwise be obtained;

(4) A subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government, all other factors such as manufacturing period and quantity being comparable; or

(5) A subcontract is to be placed on a cost-reimbursement, time and materials, labor-hour, fixed-price incentive, or fixed-price redeterminable basis.

Where subcontracts have been placed on a cost-reimbursement, time and materials, or labor-hour basis, contracting officers should be skeptical of approving the repetitive or unduly protracted use of such types of subcontacts.

(c) Consent to the placement of individual subcontracts will be limited or qualified to the extent deemed appropriate by use of the following statement:

Consent to the placement of this subcontract is hereby given, but such consent shall not relieve the prime Contractor of any obligation under the prime contract, shall be without prejudice to any right or claim of the Government thereunder, and shall not create any obligation on the part of the Government to the subcontractor under this subcontract, nor shall it be interpreted to constitute approval for the subcontractor to receive classified information.

§ 18–3.903–50 Headquarters review of major subcontracts.

(a) Procurement officers shall furnish advance notification to the Director of Procurement of the placement, under NASA prime contracts, of all first-tier subcontracts, the dollar value of which is either estimated to be $5,000,000 or more, or which may be anticipated to aggregate $5,000,000 or more with add-ons.

(b) *Procedures.* (1) When a field installation intends to consent to a proposed subcontract of the type described in paragraph (a) of this section, the information prescribed by subparagraph

(4) of this paragraph shall be transmitted to the Director of Procurement by electrical means, immediately subsequent to completion of review and prior to the issuance of consent.

(2) In the case of subcontracts contemplated under a prime contract issued by the Headquarters Contracts Division (Code BC), such information shall be forwarded to the Director of Procurement by the most expeditious means.

(3) Prime contracts shall be advised that no arrangement as to subcontract award is to be made prior to receipt of consent from the NASA contracting officer or his authorized representative.

(4) The following information shall be transmitted to the Director of Procurement:

(i) Identification of the prime contract—contractor, contract number, type of contract, status (definitive or letter contract), price or estimated cost, and brief description of items or services to be provided;

(ii) Identification of the subcontract—subcontractor, type of subcontract, price or estimated cost, brief description of items or services to be provided, and scope of subcontract work (to be described in clear and concise language);

(iii) Verification of consistency of subcontracted effort with the "make-or-buy" program of the prime contractor (proposed deviation from such program will be briefly justified);

(iv) Enumeration of sources considered or solicited for the subcontract;

(v) Justification of the selected source; and

(vi) Brief summarization of installation findings, highlighting unusual or sensitive aspects and commenting on adequacy of pricing.

(5) Immediately upon receipt of the information prescribed above, the Director of Procurement will forward a copy of such information to the appropriate Headquarters Program Office(s) for review.

(6) The Director of the appropriate Headquarters Program Office(s) and the Director of Procurement wil review such information within the purview of their assigned responsibilities. This review will be accomplished with the minimum of delay so that the installation concern may be advised within 7 work days following the transmission of the subcontract data whether there are any limitations or objections to consenting to the placement of the subcontract.

(7) Upon expiration of 7 work days following transmission of the information specified in subparagraph (4) of this paragraph, or upon receipt of notification from the Director of Procurement, whichever is sooner, and unless otherwise advised, the NASA contracting officer or his authorized representative may consent to the placement of the proposed subcontract.

(8) Nothing contained herein is intended to relieve the contracting officer of his primary responsibilities in the review of proposed subcontracts.

(9) The procedures specified herein shall be made equally applicable to Department of Defense contracting officers performing contract administration functions on behalf of NASA in accordance with field service agreements entered into between NASA and the Military Departments. In order to accomplish this objective, requests made pursuant to such agreements for the performance of contract administration functions which include review of subcontracts will specify this requirement. For the agreement with the Department of the Army, see NASA Management Instruction 2-3-9; with the Department of the Navy, see NASA Management Instruction 2-3-6; and with the Department of the Air Force, see NASA Management Instruction 2-3-4.

PART 18-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 18-4.1—Construction [Reserved]

Subpart 18-4.2—Architect-Engineer Services

Sec.

18-4.200	Scope of subpart.
18-4.201	Definitions.
18-4.202	Policy.
18-4.203	Architect-engineer selection board.
18-4.203-1	Establishment.
18-4.203-2	Functions.
18-4.203-3	Action by director of field installations.
18-4.203-4	Simplified procedures for procurement estimated to cost $10,000 or less.
18-4.203-5	Selection of architect-engineers for master planning.
18-4.204	Negotiation procedures.
18-4.204-1	General.
18-4.204-2	Conduct.
18-4.204-3	Independent government estimate.
18-4.204-4	Architect-engineer's estimate.
18-4.204-5	Fair and reasonable fee.
18-4.204-6	Procurements requiring headquarters approval.
18-4.204-7	Record of negotiation.
18-4.205	Contracting with architect-engineer firms for construction work.
18-4.205-1	Policy.
18-4.205-2	Procedure.
18-4.205-3	Exceptions.

Subpart 18-4.50—Utility Services

18-4.5000	Scope of subpart.
18-4.5001	Definition.
18-4.5002	Policy.
18-4.5003	Determination of requirements.
18-4.5004	Headquarters participation in negotiation.
18-4.5005	Contract requirements.
18-4.5005-1	Procurement without contract.
18-4.5005-2	Memorandum of understanding.
18-4.5005-3	GSA area-wide public utility contracts.
18-4.5004-4	Negotiated utility services contracts.
18-4.5006	Contracts requiring headquarters approval.
18-4.5007	Headquarters requirement for copies of contracts.
18-4.5008	Changes in rates.
18-4.5009	Sales of utility services.
18-4.5009-1	Eligible purchasers.
18-4.5009-2	Conditions affecting sales of services.
18-4.5009-3	Requirement for headquarters approval.
18-4.5009-4	Disposition of proceeds from sales.

Subpart 18-4.51—Negotiation, Award, and Administration of Basic Research Grants

Sec.

18-4.5100	Scope of subpart.
18-4.5101	Authority.
18-4.5102	Definitions.
18-4.5103	Policy.
18-4.5104	Criteria for selecting the grant as the instrument for research support.
18-4.5104-1	Selection.
18-4.5104-2	Payments.
18-4.5104-3	Simplicity and economy in execution and administration.
18-4.5104-4	Cost-sharing.
18-4.5104-5	Control of purchases.
18-4.5105	Vesting of title to research equipment.
18-4.5106	Administration of grants.
18-4.5106-1	Grant agreement.
18-4.5106-2	Determination of amount.
18-4.5106-3	Detailed procedures.
18-4.5107	Reporting of grants.
Appendix A	Administration of research grants.

Subpart 18-4.52—Management Consultant or Advisory Services

18-4.5200	Scope of subpart.
18-4.5201	Applicability.
18-4.5202	Definitions.
18-4.5203	Policy.
18-4.5204	Scope.
18-4.5205	Procedures,
18-4.5205-1	Request for project approval.
18-4.5205-2	Negotiation of contracts.
18-4.5205-3	Contract award and approval.
18-4.5205-4	Copies of reports and recommendations.
18-4.5206	Format for requesting project approval for use of management consultant or advisory services.

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Subpart 18-4.1—Construction [Reserved]

Subpart 18-4.2—Architect-Engineer Services

§ 18-4.200 Scope of subpart.

This subpart prescribes procedures for the procurement by contract of professional services of architects and engineers (referred to hereafter as architect-engineer services). Procedures for procuring architect-engineer services through the construction organization of the Corps of Engineers, Department of the Army, are set forth in NASA Management Instruction 2-3-7.

§ 18–4.201 *Definitions.*

As used in this Subpart 18–4.1, the following terms shall apply:

(a) "Architect-engineer services" consist of services required in connection with:

(1) Preparation of designs, plans, drawings, and specifications for a proposed construction project (referred to as Title I Services); and

(2) Supervision and inspection of the construction work (referred to as Title II Services).

(b) Title I Services include:

(1) Preparation of necessary topographical and other field surveys, test borings, and other subsurface investigations;

(2) Preparation of preliminary studies, sketches, layout plans, and reports, including estimates of cost of the proposed project and of all structures, utilities, and appurtenances thereto;

(3) Adaptation of Government designs, drawings, specifications, and standards for buildings and other structures as necessary;

(4) Preparation of final designs, working drawings, specifications, and cost estimates of the proposed project;

(5) Assistance to the contracting officer in preparing invitations for bids or requests for proposals for the required construction work and in evaluating bids or proposals received;

(6) Review and approval of all shop and working drawings submitted by the construction contractor; and

(7) Advice during the construction period relative to interpreting the plans and specifications in the event inspection of the construction is performed by the Government.

(c) Title II Services include complete supervision and inspection of the construction work and preparation of record drawings to show the construction as actually accomplished.

§ 18–4.202 Policy.

The selection of architects-engineers for professional services shall be based on the professional qualifications necessary for satisfactory performance of the required services and not on the basis of the evaluation of competitive bids or proposals.

§ 18–4.203 Architect-engineer selection board.

§ 18–4.203–1 Establishment.

The director of each field installation shall establish an architect-engineer selection board to be composed of not less than three members who, collectively, have experience in engineering, construction, and procurement matters. Members shall be appointed from employees from within the field installation, one of whom shall be designated as chairman.

§ 18–4.203–2 Functions.

(a) Except as otherwise provided in § 18–4.203–4, the architect-engineer selection board shall perform the following functions:

(1) Collect and maintain data on architect-engineer firms, including information on the qualifications of their members and key employees, past experience on various types of construction projects, and standing in the profession. (U.S. Government Architect-Engineer Questionnaire—Standard Form 251—will be used for this purpose.)

(2) When procurement by contract of architect-engineer services for a particular project is contemplated, review the qualifications of an adequate number of architect-engineer firms and evaluate the architect-engineer firms in accordance with paragraph (b) below. (In making this review and technical evaluation, correspondence and conferences with architect-engineer firms under consideration shall be conducted to the extent deemed necessary.)

(3) Prepare a report for submission to the director of the field installation, recommending, in the order of preference, a minimum of three firms which, after careful evaluation, are considered the best qualified to perform the required services. (This report shall include sufficient details as to the extent of the evaluation and review made and the considerations upon which the recommendations were based.)

(b) In evaluating architect-engineer firms, the architect-engineer selection board shall consider the following factors:

(1) Specialized experience of the firm in the field or fields required;

(2) Capacity of the firm to perform the work within the required time;

(3) Past record of performance on contracts with NASA, other Government agencies, and private industry including such factors as control of costs, quality of work, and ability to meet schedules; and

(4) Geographic location of the firm and its familiarity with the area in which the project is located.

Since it is NASA policy to encourage additional firms to participate in the performance of architect-engineer services for NASA, the architect-engineer selection board shall, to the fullest extent practicable, give favorable consideration to qualified firms not having prior performance experience with NASA.

§ 18–4.203–3 Action by directors of field installations.

Except as otherwise provided in § 18–4.203–4, the director of the field installation shall review the recommendations of the architect-engineer selection board and shall:

(a) Approve the recommended list of qualified architect-engineer firms as submitted;

(b) Rearrange the order of preference; or

(c) Return the recommendations to the board for such action as he may consider necessary.

The director of the field installation shall advise the board of the final action and shall furnish the contracting officer with a copy of the report and final action thereon which will serve as authorization to commence negotiation. The list of qualified firms in order of preference is for internal use of NASA, and such information shall not be made known to the firms under consideration.

§ 18–4.203–4 Simplified procedures for procurement estimated to cost $10,000 or less.

When authorized by the director of the field installation, one of the simplified procedures set forth in this § 18–4.203–4 may be used in selecting architect-engineer firms to perform services that are estimated to cost $10,000 or less, in lieu of the architect-engineer selection board performing the functions prescribed by § 18–4.203–2(a) (2) and (3), and actions prescribed by § 18–4.203–3.

(a) *Selection by the board.* After reviewing and evaluating architect-engineer firms in accordance with §§ 18–4.203–2(a)(2) and 18–4.203–2(b), the board will prepare a report for submission to the contracting officer listing, in the order of preference, a minimum of three firms which, after careful evaluation, are considered the best qualified to perform the required services. (This report will include sufficient details as to the extent of the evaluation and review made and the considerations upon which the selections were based.) This report will be forwarded to the contracting officer and will serve as authorization to commence negotiation.

(b) *Selection by the chairman of the board.* When, in the judgment of the chairman of the board, it is considered that board action is not required in connection with a particular selection of architect-engineer firms, the following procedures will be followed:

(1) The chairman of the board will perform the functions required by § 18–4.203–2(a)(2).

(2) The chairman of the board will prepare a report in the same manner as that prescribed by § 18–4.203–2(a)(3), except that the report will be submitted to the director of the field installation or his designee for concurrence.

(3) The Director of the field installation or his designee will review the report from the chairman of the board, and concur with the selection made by the chairman, or return the report to the chairman for such action as may be considered necessary.

(4) Upon receipt of a concurred report, the chairman of the board will furnish the contracting officer with a copy of the report. Such report will serve as authorization to commence negotiation.

§ 18–4.203–5 Selection of architect-engineers for master planning.

(a) *Definition of master plan.* A master plan is an integrated series of documents which present in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.* Where it is proposed to select an architect-engineer to develop a master plan in connection with the establishment of a new NASA activity

or installation, the report prepared by the architect-engineer selection board, in accordance with § 18–4.203–2(a)(3), will be forwarded by the director of the field installation, with his concurrence in the selection, to the cognizant Institutional Director, NASA Headquarters, for the approval of the Administrator and the concurrences of the Deputy Administrator and the Associate Administrator. The cognizant Institutional Director will refer the report for review to the Office of Procurement (Code KD), the Office of Construction (Code KC), and to other offices as appropriate under the circumstances. After receipt of comments and recommendations from the reviewing offices, the cognizant Institutional Director will revise, modify or concur in the report, as appropriate, and forward it to the Administrator via the Associate Administrator.

§ 18–4.204 Negotiation procedures.

§ 18–4.204–1 General.

(a) The contracting officer is responsible for conducting the negotiations and for the results thereof. In discharging his responsibilities, the contracting officer shall use the services of technical, legal, financial, pricing, and other specialists in NASA, as required. Negotiations shall be directed toward:

(1) Making certain that the proposed contractor has a clear understanding of the essential details of the required work;

(2) Determining that the proposed contractor will make available the necessary personnel and organization to accomplish the work within the required time; and

(3) Effecting mutual agreement on the provisions of the contract and on a fair and reasonable fee (contract price) for the required work.

(b) *Limitation on fee.* Pursuant to 10 U.S.C. 2306(d), the amount of the fee that may be paid to an architect-engineer under a cost-plus-a-fixed-fee contract for the production and delivery of the designs, plans, drawings, and specifications required for the accomplishment of any public works or utilities project may not exceed 6 percent of the estimated cost of such project, exclusive of the amount of such fee. In addition, it is NASA policy to apply this statutory limitation to the fee paid to an architect-engineer for the performance of such services under a fixed-price contract. The architect-engineer services subject to this limitation are those described in § 18–4.201(b) (1), (3), and (4). This limitation shall be applied on an individual contract basis.

§ 18–4.204–2 Conduct.

Negotiations shall be conducted initially with the architect-engineer firm given first preference under the procedures set forth in § 18–4.203. If a mutually satisfactory contract cannot be negotiated with such firm, the negotiations shall be terminated and the firm notified. Negotiations then shall be initiated with the firm given second preference and this procedure shall be continued until a mutually satisfactory contract has been negotiated.

§ 18–4.204–3 Independent government estimate.

Prior to the initiation of negotiations, the contracting officer shall develop an independent Government estimate of the cost of the required architect-engineer services, based on a detailed analysis of the costs expected to be generated by the work. Information, such as hourly pay rates and overhead and general and administrative expense loading factors, may be requested from the architect-engineer firm under consideration to the extent required in preparing the Government estimate. The independent Government estimate shall be revised as required during negotiations to reflect changes in, or clarification of, the scope of the work to be performed by the architect-engineer. A cost estimate, based on the application of percentage factors to cost estimates of the various segments of the construction project, may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

§ 18–4.204–4 Architect-engineer's estimate.

The contracting officer shall request the architect-engineer firm to submit its proposed fee and supporting detailed cost breakdown. Such request shall be made prior to the initiation of negotiations, where practicable, or promptly after agreement on the scope of the work to be performed has been reached during negotiations. Revisions of the proposed fee and supporting detailed cost breakdown shall be requested as required during negotiations to reflect changes in, or clarification of, the scope of the work to be performed by the architect-engineer.

§ 18–4.204–5 Fair and reasonable fee.

The contracting officer shall negotiate a fee considered fair and reasonable based on a comparative study of the independent Government estimate and the architect-engineer's estimate. Significant differences between elements of the two estimates and between the overall estimates shall be investigated, and the contracting officer shall satisfy himself as to the reasons therefor.

§ 18–4.204–6 Procurements requiring headquarters approval.

Contracts for architect-engineer services that require the prior approval of the Director of Procurement are specified in § 18–50.105(b)(iii) of this chapter. The request for approval shall include all information required to be developed by this § 18–4.204 and, in particular, shall set forth the detailed cost breakdown on which the determination was based that the proposed fee is fair, reasonable and consistent with the provisions of § 18–4.204–1(b).

§ 18–4.204–7 Record of negotiation.

Promptly at the conclusion of each negotiation, the contracting officer shall prepare a memorandum, setting forth the principal elements of the contract negotiations, for use of reviewing authorities and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the fee and other terms of the contract. § 18–50.106 of this chapter prescribes the type of information to be included.

§ 18–4.205 Contracting with architect-engineer firms for construction work.

§ 18–4.205–1 Policy.

Except as provide in § 18–4.205–3, the award of a contract for architect-engineer services for a particular facility and the award of a contract for the related construction work to the same firm, its subsidiaries, or affiliates is prohibited. This policy prevents the development of situations where architect-engineer firms might be discouraged from furnishing their best professional services and from rendering unbiased decisions during the design and construction periods. Accordingly, bids or proposals for the construction of a facility shall not be solicited from the firm furnishing architect-engineer services for that facility, its subsidiaries, or affiliates; and unsolicited bids or proposals from that firm, its subsidiaries, or affiliates shall not be considered.

§ 18–4.205–2 Procedure.

An architect-engineer firm, selected for negotiation of an architect-engineer services contract under the procedures set forth in § 18–4.203, shall be advised of the policy set forth in § 18–4.205–1 prior to the initiation of negotiations, if that firm possesses construction capabilities either within its own organization or through subsidiaries or affiliates. The firm shall have the option of either:

(a) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(b) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm, its subsidiaries or affiliates will be ineligible to compete for the related construction contract.

§ 18–4.205–3 Exceptions.

The policy set forth in § 18–4.205–1 is not applicable to:

(a) Those cases where the Director of Procurement specifically authorizes, prior to the initiation of negotiations, the use of a cost-plus-a-fixed-fee contract for both the design and construction of a specialized facility; or

(b) Those cases in which a contract is awarded on the basis of performance specifications for the construction of a facility, and the contract requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

Requests for authorization, pursuant to paragraph (a) of this section, shall be in sufficient detail to establish the need for procuring both design and construction under one contract. In neither of the excepted cases in paragraphs (a) and

(b) of this section shall the firm that prepared the drawings and specifications be engaged to supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 18–4.50—Utility Services

§ 18–4.5000 Scope of subpart.

This subpart prescribes policy and procedures for the procurement and sale of utility services.

§ 18–4.5001 Definition.

As used in this subpart, the term "utility services" includes electric, gas, water, steam, and sewage services.

§ 18–4.5002 Policy.

It is NASA policy to obtain required utility services from existing sources when such sources are adequate and economical arrangements can be made for their use. In each case, the required services shall be obtained, at the lowest possible cost to the Government, after fully investigating all sources. To the extent consistent with this policy, use should be made (a) of General Services Administration area-wide public utility contracts (see Subpart 18–5.8 of this chapter); and (b) on a cross-servicing basis, of utility services available from other Government agencies.

§ 18–4.5003 Determination of requirements.

Installation requirements for utility services shall be determined by technically qualified personnel. They will furnish the contracting officer with a full description of the services required and with as complete a description of the load data pertaining thereto as is necessary for the contracting officer to procure the services required.

§ 18–4.5004 Headquarters participation in negotiations.

(a) Except as provided in paragraph (c) of this section, the contracting officer shall submit the following information on a proposed procurement to the Office of Procurement (Code KDF), prior to initiating negotiation procedures:

(1) A full description of the services required, including data on estimated maximum demand, average monthly consumption, and duty cycle;

(2) Identification of all available sources of supply and a statement as to the ability of each source to provide the required services;

(3) Location and description of each proposed supplier's facilities at the nearest point of service;

(4) A description of the facilities needed by each proposed supplier and by the Government to obtain the required services from each source of supply;

(5) Copies of all applicable published rate schedules and any special rate schedules accorded by contract to users with similar requirements;

(6) Date initial service is required;

(7) Known or estimated time schedule for growth of requirements;

(8) An estimate of the annual cost of the services to be procured; and

(9) Identification of any unusual factors affecting the procurement.

(b) Based upon a review of the information submitted in paragraph (a) of this section, the Office of Procurement will determine whether NASA Headquarters participation in the negotiation proceedings in an advisory capacity to the contracting officer is considered desirable. The contracting officer will be informed promptly of the decision of the Office of Procurement.

(c) The requirements of paragraph (a) of this section are not applicable when:

(1) The estimated annual cost of the services to be procured is $50,000 or less; or

(2) The contract period will be less than six months and the proposed contract will not require the Government to pay a nonrecurring, nonrefundable fee of more than $1,000 to cover the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities.

§ 18–4.5005 Contract requirements.

§ 18–4.5005–1 Procurement without contract.

Utility services may be procured without a written contract when all the following conditions apply:

(a) The services are to be furnished at rates, terms, and conditions of an established rate schedule approved by a Federal, State, or other public regulatory body;

(b) The estimated annual cost of the services to be procured is $2,500 or less;

(c) Neither a connection, termination, installation, or similar charge, nor a deposit, other than a meter deposit required of all customers, is involved;

(d) The utility supplier does not require the execution of a contract or application form; and

(e) It is not deemed advantageous to the Government to negotiate and execute a contract.

§ 18–4.5005–2 Memorandum of understanding.

A memorandum of understanding, specifying the services to be provided and the conditions under which they will be supplied, shall be used when procuring utility services from another Government agency by cross-servicing.

§ 18–4.5005–3 GSA area-wide public utility contracts.

For the procurement of utility services by use of General Services Administration area-wide public utility contracts, see Subpart 18–5.8 of this chapter.

§ 18–4.5005–4 Negotiated utility services contracts.

When the conditions of §§ 18–4.5005–1 through 18–4.5005–3 do not apply, see Subpart 18–7.50 of this chapter for the clauses and § 18–16.501 of this chapter for the forms to be used in the procurement of utility services by negotiation.

§ 18–4.5006 Contracts requiring headquarters approval.

A proposed contract or memorandum of understanding for utility services, or modifications thereto, shall be submitted to the Office of Procurement (Code KDF) for approval in accordance with Subpart 18–50.1 of this chapter when it falls in any of the following categories:

(a) It involves an annual cost in excess of $50,000;

(b) It involves payment of a connection charge, deposit (other than a meter deposit or membership fee, in the case of a cooperative, required of all customers), termination charge, installation charge, or other special service charge, except as provided in § 18–4.5004(c)(2);

(c) It involves services available from two or more sources of supply;

(d) It uses NASA Form 550 (see § 18–16.501–50 of this chapter) and involves proposed deviations from the provisions of the form other than deviations required to be used when applicable or authorized by Subpart 18–7.50 of this chapter; and

(e) It involves exchange or interchange of utility services.

§ 18–4.5007 Headquarters requirement for copies of contracts.

The contracting officer shall forward to the Office of Procurement (Code KDF), one copy of each contract, service authorization form, memorandum of understanding, or modification thereto, promptly after execution thereof. When contractual approval by NASA Headquarters is required (in accordance with § 18–4.5006), the requirement for copies of the contractual document, set forth in Subpart 18–50.1, of this chapter shall be increased by one copy.

§ 18–4.5008 Changes in rates.

(a) When the contractor furnishes written notice to the contracting officer of a filing of an application for rate changes, as provided for in the clause entitled "Public Regulation and Change of Rates" of § 18–7.5001–11 of this chapter, or whenever the contractor requests that rate changes be negotiated, as provided for in the clause entitled "Change of Rates," of § 18–7.5003–2 of this chapter, the contracting officer will notify the Office of Procurement. The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes and a recommendation of action to be taken under subparagraph (1) or (2) of this paragraph, and the basis therefor.

(1) When a notice is received of a filing of an application for rate changes before the local regulatory body, the contracting officer will make a recommendation as to whether the Government should intervene in the hearing on the application, the basis for such intervention, and the extent to which the installation can support intervention through the presentation of testimony, preparation of exhibits, and the furnishing of legal counsel.

(2) When a notice is received that the contractor requests that rate changes be

negotiated, the contracting officer will make a recommendation of the position to be taken with respect to the rate changes and the extent to which installation personnel are available to support this position.

(b) The Office of Procurement will furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body or in negotiations with the contractor. Prior to recommending any action concerning the proposed rate changes, the Office of Procurement will, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the recommendations of the Office of Procurement for at least 15 days prior to taking any action concerning the proposed rate changes.

§ 18–4.5009 Sales of utility services.

§ 18–4.5009–1 Eligible purchasers.

An installation may furnish utility services to any Federal agency, mixed ownership (Government) corporation (as defined in the Government Corporation Control Act (31 U.S.C. 856)), or any bureau or office thereof, located at or in the immediate vicinity of that installation. Requests for furnishing utility services to other purchasers, together with complete justification, shall be forwarded to the Office of Procurement for decision.

§ 18–4.5009–2 Conditions affecting sales of services.

All the following conditions must be met before an installation is authorized to enter into a memorandum of understanding for the sale of utility services to an eligible purchaser:

(a) The sale will not disrupt present or contemplated service to the installation;

(b) All modifications to existing facilities and installations of additional facilities required to provide service to the purchaser will be made at the purchaser's expense;

(c) The rate charged to the purchaser will cover at least the increased cost to the installation of supplying the service.

(d) The sale of utility services is not prohibited by the contract under which the installation purchases the services; and

(e) The sale of utility services is confined to sales for consumption, not for resale.

§ 18–4.5009–3 Requirement for headquarters approval.

Each proposed memorandum of understanding for the sale of utility services shall be submitted to the Director of Procurement for approval. The accompanying information will establish that the requirements set forth in § 18–4.5009–2 have been met.

§ 18–4.5009–4 Disposition of proceeds from sales.

Funds derived from the sale of utility services shall be deposited as appropriation reimbursements to the credit of the appropriation or appropriations currently available for the supply of such services.

Subpart 18–4.51 — Negotiation, Award, and Administration of Basic Research Grants

§ 18–4.5100 Scope of subpart.

(a) This subpart establishes policies and procedures for (1) the negotiation, award, and administration of basic research grants to nonprofit educational institutions and to nonprofit organizations operated primarily for scientific purposes; and (2) the vesting of title to research equipment, purchased with grant or contract funds, in nonprofit institutions or organizations.

(b) Except with regard to vesting of title to research equipment, the policies and procedures applicable to the negotiation, award, and administration of research contracts, including prescribed forms and clauses, and administrative requirements regarding approval of such contracts, are set forth in other parts of this chapter.

§ 18–4.5101 Authority.

Under the Act of September 6, 1958 (42 U.S.C. 1891–1893), entitled "An Act To Authorize the Expenditure of Funds Through Grants for Support of Scientific Research and for Other Purposes," NASA is authorized to make grants for basic scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research. This Act also provides discretionary authority for vesting title to equipment purchased with grant or contract funds in these institutions and organizations, under grants or contracts for the conduct of basic or applied scientific research, without further obligation to the Government, or on such terms and conditions as NASA deems appropriate.

§ 18–4.5102 Definitions.

For purposes of this subpart, the following terms shall have the meanings set forth below.

(a) *Grant.* An award of funds included in a written agreement executed by the Administrator or his duly authorized representative.

(b) *Basic research.* Research directed toward the increase of knowledge in science wherein the primary aim of the investigator is to gain a fuller knowledge or understanding of the subject under study.

(c) *Nonprofit institution or organization.* Any corporation, foundation, trust, or institution operated for educational or primarily scientific purposes which is not organized for profit and no part of whose net earnings inures to the profit of any private shareholder or individual.

§ 18–4.5103 Policy.

(a) NASA policy is to use the grant instrument to sponsor required basic research at nonprofit institutions or organizations when it is desired (1) to provide latitude to investigators that will encourage maximum creativity, and (2) to have the minimum administration consistent with the public interest.

(b) In addition, it is NASA policy to provide appropriate continuity of support in research sponsored under grants. In general, initial obligation of funds shall not be made for a period of more than five years. Insofar as is practicable, notice of termination or extension of support shall be given at least one year in advance.

§ 18–4.5104 Criteria for selecting the grant as the instrument for research support.

§ 18–4.5104–1 Selection.

Selection of the grant as the instrument of research support shall be made after full consideration is given to the nature of the proposed research, the manner in which it will be performed, and the magnitude and extent of the support. Grants may be made only to support basic scientific research. Some of the significant factors to be considered in selecting the instrument of research support are set forth in §§ 18–4.5104–2 through 18–4.5104–5.

§ 18–4.5104–2 Payments.

Use of a grant as the instrument of research support permits payments to be made automatically in advance—either on a lump-sum or a periodic basis, depending on the size of the total grant and the estimated timing of financial requirements. Submission of vouchers by grantees is unnecessary. In contrast, under contracts the contractors must submit vouchers or invoices, and special Government determination and administrative requirements apply if advance payments are to be made.

§ 18–4.5104–3 Simplicity and economy in execution and administration.

Under a NASA grant the need for Government supervision and for periodic progress reports by the investigator will be minimal. Economies also result from modification of accounting and auditing procedures normally applicable to research contracts.

§ 18–4.5104–4 Cost-sharing.

Use of a grant simplifies administrative procedures, both prior to and after award, in cases in which other governmental and nongovernmental organizations will make contributions to the basic research project.

§ 18–4.5104–5 Control of purchases.

The grant instrument should not be used, however, when it is practicable and desirable to have close control of purchases of research equipment and capital property items.

§ 18–4.5105 Vesting of title to research equipment.

(a) Title to all or any part of the equipment purchased with basic research grant funds, or basic or applied research contract funds, may be vested in the nonprofit institution or organization that has conducted or will conduct the research.

(b) Contracting officers, in conjunction with cognizant technical personnel, shall:

(1) Determine in writing those instances where it is desirable to vest title to equipment purchased with grant or applicable contract funds in grantees or contractors; and

(2) Be responsible for determining, after the conclusion of research and after appropriate coordination (including consideration of the needs of NASA installations), those instances in which NASA will require a transfer of title to NASA of items of equipment costing in excess of $1,000, or, in certain cases, as specified in the contract "Government Property" clause, of research equipment costing a contractor in excess of $3,000 (see § 18–13.506–2 of this chapter).

(c) Vesting of title may be effected in the grant agreement or in the contract and may be inclusive or specific. Prior to the vesting of title in the grantee or contractor, it must be determined that such action furthers the objectives of NASA. This determination may be based on, but is not restricted to, consideration of such factors as the following:

(1) That the equipment will continue to be utilized on research of interest to the Government;

(2) That the retention of title in NASA will create an administrative burden not warranted by the value of the equipment;

(3) That the administration and keeping of records by the nonprofit institution or organization will become prohibitively complicated or expensive; or

(4) That the expense involved in redistributing or relocating particular equipment wil be excessive as compared to the value of the equipment.

(d) In connection with a contract, when it is anticipated that title to equipment may be vested in the contractor in accordance with this Subpart 18–4.51, the alternate paragraph (c) of the "Government-Furnished Property" clause in § 18–13.505–2 of this Chapter shall be included in fixed-price contracts using the long form clause, and the addition to paragraph (c)(1) of the "Government Property" clause in § 18–13.506–2 of this Chapter shall be included in cost-reimbursement contracts using the long form clause.

§ 18–4.5106 Administration of grants.

§ 18–4.5106–1 Grant agreement.

(a) The grant agreement shall be brief in format, containing only those provisions necessary to protect the fundamental interests of the Government, including provision for acquisition by the Government of title to and rights in inventions arising out of the research, and for revocation of the grant, if necessary, after consultation between the grantee institution and NASA.

(b) The grant agreement shall provide for audit of grants by NASA or its representatives at all reasonable times during the life of the grant and for three years thereafter. In this connection, the NASA audit program for grants shall involve sample audits on a selective basis. The Government's audit of NASA grants shall be for the purpose of appraising and evaluating the grantee's performance from a business management standpoint and not for the purpose of adjustment of grant amounts..

§ 18–4.5106–2 Determination of amount.

(a) Regulations governing contracts generally are not appropriate for application to grants. However, in general, in determining the initial amount of a grant the same factors shall be taken into consideration as are considered in making a contract. Accordingly, the cost principles set forth in Subpart 18–15.3 of this chapter shall be used as a guide.

(b) In no case shall an indirect cost rate used for determining grant amounts exceed, in equivalence, the most recently determined proper indirect cost rate at the grantee institution for comparable research contracts of the Government.

(c) Grant amounts determined at the time of the award shall not be adjusted other than in case of revocation or in the event grant funds are not committed by the grantee prior to completion of the research involved.

§ 18–4.5106–3 Detailed procedures.

The procedures set forth in Appendix A to this Subpart 18–4.51 shall be used in the detailed administration of grants in accordance with the policies of this subpart.

§ 18–4.5107 Reporting of grants.

Pursuant to section 3 (42 U.S.C. 1893) of the Act of September 6, 1958 (P.L. 85–934), an annual report shall be made to the appropriate committees of both Houses of Congress on or before June 30 of each year. Such report shall set forth for the preceding year:

(a) The number of grants made pursuant to Section 1 of the Act (42 U.S.C. 1891);

(b) The dollar amount of such grants; and

(c) The institutions in which title to equipment was vested pursuant to section 2 of the Act (42 U.S.C. 1891).

Appendix A: Administration of Research Grants

1. *General.* NASA assumes that, once a grant is made, the principal investigator, operating within the policies of the grantee institution, is in the best position to determine the means by which the research may be conducted most effectively. Accordingly, the primary responsibility for the administration of any grant is one that is shared by the grantee and the principal investigator. NASA wishes to avoid any action that might diminish the responsibility of the grantee and the investigator for making sound scientific and administrative judgments. Grantees and investigators are encouraged to seek the advice and opinions of NASA on problems that may arise. Unless otherwise stated, the giving of such advice should not imply that the responsibility for final decisions has shifted to NASA. The primary concern of NASA is that granted funds be used in a manner that will make a maximum contribution to the progress of science—and it is expected that grantees and investigators will also direct their efforts to this end. Grant funds may not be used to purchase land, or any interest therein, to acquire or construct facilities, or to procure passenger-carrying vehicles or other articles of non-scientific nature.

2. *Grant agreement.* A NASA grant is consummated by an agreement signed by the Administrator, NASA, or his duly authorized representative. (See Attachment 1 to this Appendix.) Normally, this agreement will contain a minimum of express conditions which, upon acceptance of the grant, will bind the grantee. These conditions may relate to the general nature and scope of the research, revocation of the grant, and patent rights. The simplicity of the NASA grant agreement does not preclude the possibility of collateral understandings and informal agreements which may, in special instances, accompany the formal grant or accumulate, as the occasion demands, during the life of the grant.

3. *Grant period.*

(a) Normally, NASA grants are made for periods up to five years. As stated in the grant instrument, the period is approximate; the beginning and ending dates are not specified. The grant period begins approximately on the date of the grant and extends for approximately the length of time specified. However, when progress of research under the grant is delayed and circumstances make it necessary to request an extension of the grant period without additional funds, the policy of NASA is to permit extensions in time, upon written request.

(b) When it appears that the research contemplated will be completed within a reasonably short period of time after the approximate ending date, a request for extension of the grant period will be unnecessary. If it appears, however, that the time required for completion of the research will exceed four to six months, it is requested that NASA be informed and an extension requested.

4. *Grant payments.* Payments will be made in a lump-sum payment in advance or on a periodic basis depending on the relative size of the total grant and the estimated timing of financial requirements. If payments are to be made on a periodic basis, the schedule of payments will be set forth in the grant instrument. NASA will, at any time, consider a request initiated by the grantee or the principal investigator for a revised schedule of payments.

5. *Adherence to original budget estimates.* NASA believes that the principal investigator, operating within the established policies of the grantee institution, is the individual best qualified to determine the manner in which the grant funds may be used most effectively to accomplish the proposed research. Therefore, once the grant has been made, the investigator and the institution are free to spend the funds for the proposed research without strict adherence to the original budget estimates, except that under no circumstances may grant funds be used to acquire any interest in land. NASA will, however, appreciate being kept informed of contemplated major deviations from the budget estimates and the reasons therefor.

6. *Reports and publications.*

(a) *Technical reports.* (1) Status reports, comprising a concise statement of the research performed and appropriate expenditures under the grant in such reasonable detail as may be desired by NASA, are required semiannually unless otherwise agreed.

(2) Upon completion of the research supported by a NASA grant, a complete report

(or reports) of the work is required. Citation of publications resulting from the research may serve as all or part of this final report. Research results not intended for publication in technical journals must be in the format prescribed for NASA Technical Notes. In addition, the grantee will report to NASA whether or not any inventions required to be reported under the grant have been made in the performance of work under the grant.

(b) *Fiscal reports.* A final fiscal report for information purposes is required for each grant. Report forms for this purpose are forwarded to the business office of the grantee institution, together with the copy of the grant instrument; additional forms may be requested. Two copies of the final fiscal report should be forwarded to NASA after work under the grant has been completed.

(c) *Publication.* (1) It is the intent of NASA that all useful research information obtained as a result of NASA sponsorship be given the widest practicable dissemination through publication media, as the author of the report may elect.

(2) Reports for publication as NASA Technical Notes should be submitted in three copies, one of which is the original typed manuscript suitable for photo-offset reproduction without further editing or retyping. The style and format must correspond closely to the editorial standards of NASA Technical Notes, and all illustrations must be on glossy photographic prints, with an image of 6½ x 8½ inches.

(3) If the author elects publication in a learned journal, three copies of the manuscript are required by NASA in advance of submission to the journal, for information purposes only, since permission to publish is not required. Proper acknowledgement of NASA sponsorship will be included. Twenty reprints of published articles are also required. It is understood that illustrations and texts of such reports, research notes, and other information and scientific data resulting from a grant may be published, reproduced, or used by or for the Government for governmental purposes without limitation.

7. *Equipment.* Title to equipment purchased with grant funds will vest in the grantee institution subject to the right of NASA to require transfer to it, at the conclusion of the research, of items costing in excess of $1,000.

8. *Security.* When the principal investigator judges that information developed should be classified, he should notify NASA immediately.

9. *Patents.* Disposition of patent and other rights in any inventions or discoveries made or conceived during the research shall be the responsibility of NASA; the grantee shall give NASA reasonable notice of any invention and cooperate with NASA to secure any patent rights which may flow therefrom.

10. *Acknowledgment.* The following acknowledgment of NASA support will be made in publications based on work aided by NASA:

"This research was supported in whole or in part by the National Aeronautics and Space Administration under Grant No. ---------."

11. *Revocation of grants.*

(a) NASA grants may be revoked in whole or in part by NASA after consultation with the principal investigator and the grantee, except that a revocation shall not affect any financial commitment which in the judgment of NASA and the grantee had become firm prior to the effective date of the revocation. Upon revocation, the grantee shall reduce, insofar as is possible, the amount of outstanding commitments and repay to NASA, by check made payable to the Treasurer of the United States, the uncommitted balance of all funds that have been paid to the grantee by NASA under the terms of the particular grant concerned.

(b) The grantee shall communicate with NASA whenever he has reason to believe that circumstances may necessitate revocation of the grant. It is expected that the most common cause for revocation will be the inability of the grantee to carry out the research for which the grant is made or to adhere to the other conditions set forth in the grant instrument. As a general rule, the availability of the services of the principal investigator named in the grant instrument is one of the conditions of the grant. Consequently, NASA should be informed immediately whenever it appears that the principal investigator will find it impossible to continue to direct the research.

12. *Transfer of grants to other institutions.* When the principal investigator changes his organizational affiliation and desires support for his research at his new location, he must submit a new proposal via the appropriate officials of the new institution. Although such proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant, describing the scientific progress and expenditure to date, will be required.

13. *Accounting procedures.* While no particular classification of accounts is required, it is expected that grantees will maintain records for each grant, in accordance with generally accepted accounting practices, that will permit preparation of the required fiscal report and make possible the determination that grant funds were used for the general purpose for which the grant was made.

Attachment 1 to Appendix A

(COVER)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Washington, D.C. 20546

Research Grant

No. NsG-------

TO

(Institution)

(Address)

This grant is for research to be conducted for a period of

Approximately ----------
Beginning About----------
Total Amount of Grant $----

The purpose of this grant is to support basic scientific research in furtherance of the objectives of the National Aeronautics and Space Administration, and it is awarded in accordance with the authority to make such grants as set forth in P.L. 85-934 (72 Stat. 1793).

(COVER)

THE UNITED STATES OF AMERICA

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Washington, D.C. 20546

Research Grant

No. NsG-------

The National Aeronautics and Space Administration (NASA) hereby grants the sum of

$---------
to

---

for the support of basic scientific research entitled:

---

under the direction of

---

for a period of approximately ----------
beginning about ----------

This grant will be administered in accordance with NASA policies and procedures for research grants as set forth in "NASA Policy for Administration of Research Grants," attached hereto and incorporated herein by reference, and in conformity with other understandings between NASA and the grantee relating to this grant.

Title to all equipment purchased with funds supplied herewith shall vest in the grantee. It is a condition of this grant that the grantee promptly inform NASA of the purchase with grant funds of items of research equipment costing in excess of one thousand dollars ($1,000). The Government reserves the right to require transfer to it of items purchased at a cost in excess of this amount. This right may be exercised only within the ninety (90) days next following receipt of the final report on the research supported herewith; any charges for packing, crating, and shipping which may be involved will be at the expense of the Government.

It is a condition of this grant that it may be revoked in whole or in part by NASA after consultation with the principal investigator(s) and the grantee. In the event of revocation, the grantee shall refund to NASA any unexpended grant funds, except such portion thereof as may be required by the grantee to meet commitments which, in the judgment of NASA and the grantee, had become firm prior to the effective date of revocation and are otherwise appropriate.

Since this grant is subject to section 305 of the National Aeronautics and Space Act of 1958, it is a further condition of this grant that the grantee shall furnish a written report containing full and complete technical information concerning any invention made in the performance of any work under this grant to NASA promptly upon the making of such invention. The term invention includes any invention, discovery, improvement, or innovation (whether or not patentable). The Administrator, NASA, shall have the sole power to determine the disposition of the title to and rights under any such invention. The grantee agrees to furnish such additional factual information required by NASA concerning the circumstances under which such invention was made, and to take such further steps as are necessary to enable the Administrator, NASA, to file patent applications on any such inventions.

Finally, it is a condition hereof that the grantee grant to the Government, wherever he has the power to do so, the right to publish, translate, reproduce, deliver, and dispose of all data, including reports, drawings, blueprints, and technical information, which are delivered to the Government under this grant, and to authorize others to do so.

Until further notice, it is contemplated that this grant will be paid in accordance with the following schedule:

(Date)

(Amount)

THE UNITED STATES OF AMERICA

By ----------
(Name)

(Title)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

ACCEPTANCE

---------- is pleased to accept
(Grantee)
this research grant.

By ----------
(Signature of Authorized Official)

(Title)

Subpart 18–4.52—Management Consultant or Advisory Services

§ 18–4.5200 Scope of subpart.

This subpart sets forth the policy and procedures for negotiating contracts with firms and organizations for management consultant or advisory services for NASA. The policies and procedures for obtaining the services of individual experts and consultants are set forth in NASA Management Instructions 17–3–16.1 and 17–3–16.2A.

§ 18–4.5201 Applicability.

The provisions of this subpart are applicable to NASA Headquarters offices and field installations. In addition, the Western Operations Office shall follow the procedures set forth herein in administering Jet Propulsion Laboratory contracts requiring approval of the Western Operations Office.

§ 18–4.5202 Definitions.

The following definitions apply to this subpart.

(a) The term firms and organizations includes:

(1) Any business enterprise, association, foundation, or educational institution; and

(2) Any unit of government outside the Federal Government of the United States.

(b) The term management consultant or advisory services includes:

(1) Any examination, survey, study, review, analysis, assistance, consultation, or advice having as its purpose improvement in the effectiveness, efficiency, and economy of NASA management operations; and

(2) Any effort to improve the NASA organizational structure, business systems, industrial processes, performance standards, methods, procedures, plant or office layout, managerial skills, or general administration, as well as research leading directly to any of these services.

The term "management consultant or advisory services" does not include services for research and development; nor does it include reliability studies, plant operation and maintenance services, architect-engineering services, stenographic services, or services of consulting physicians.

§ 18–4.5203 Policy.

It is NASA policy to utilize firms and organizations outside the Government for management consultant or advisory services to improve NASA management, and to contract for such services when such requirements are necessary and:

(a) Comparable services are not obtainable within the NASA organization or from other Government organizations; or

(b) An assessment of NASA management practices by firms or organizations outside the Government organizational structure would prove more beneficial than an intragovernmental study.

§ 18–4.5204 Scope.

The functions for which management consulting firms and other organizations may be of valuable assistance to NASA include, but are not limited to, the following:

(a) Conducting training programs to increase the competence and effectiveness of NASA employees;

(b) Reviewing NASA support and operating programs (for example, procurement and supply) to increase the responsiveness of such programs to NASA needs;

(3) Modernizing NASA systems and procedures;

(4) Strengthening NASA organization and management structure, planning, and controls; and

(5) Organizing new programs or services.

§ 18–4.5205 Procedures.

§ 18–4.5205–1 Request for project approval.

(a) When an office in NASA Headquarters or field installations considers that management consultant or advisory services are necessary and desirable, in accordance with the policy stated in § 18–4.5203, the office will prepare and submit a request for such services (in an original and five copies) using the "Request for Project Approval for Management Consultant or Advisory Services" format set forth in § 18–4.5206. The "Request for Project Approval for Management Consultant or Advisory Services" must be approved, in addition to other approvals that may be required, by the division chief of the initiating office and (1) in the case of Headquarters-initiated requests, by the NASA Headquarters Program or Staff Office, or (2) in the case of installation-initiated requests, by the Director of the installation. All requests for project approvals shall be forwarded to the Office of Procurement. The Office of Procurement (Code KDR) will forward all field installation project approval requests to the appropriate Headquarters Program Office for approval prior to any action.

(b) The Office of Procurement will:

(1) Review the procurement and contractual aspects of project approval requests (for example, a request may seek to have a contract with a specific firm and the review could indicate that competitive proposals could and should be obtained); and

(2) Forward a copy of the project approval request to the Management Analysis Division, NASA Headquarters.

(c) The Management Analysis Division, NASA Headquarters, will analyze and evaluate the request as to:

(1) The necessity for the task (taking into account, for example, whether the task is required to be initiated immediately or should be deferred; and whether the problem involved is likely to be affected by other current NASA plans);

(2) The proposed method of accomplishment as compared to alternative feasible methods (whether, for example, instead of contracting for management consultant or advisory services, it would be more expeditious and less costly for NASA to hire experts temporarily on a per diem basis);

(3) The significance of the problem and the extent it relates to NASA functions generally and different NASA organizational elements; and

(4) Other pertinent considerations.

(d) Upon completion of its review and evaluation, the Management Analysis Division will return the project approval requests with recommendations and comments to the Office of Procurement.

(e) When a request is approved by the Office of Procurement and by the Management Analysis Division, it will be forwarded to the appropriate procurement office for action.

§ 18–4.5205–2 Negotiation of contracts.

(a) Unless sole-source negotiation is authorized, negotiation of contracts for management and consultant services must be conducted with a number of firms or organizations that will permit NASA to evaluate, prior to making award, the comparative merits of qualified sources and of different approaches to the task.

(b) Contracting officers shall include in the request for proposal a requirement that each offeror furnish the following information with his price quotation:

(1) The name(s) of principal members of the contractor organization who will be responsible for the project;

(2) The title of each official and the number of employees who will participate;

(3) The estimated number of man-hours that each official and employee will contribute to the proposed project; and

(4) The standard billing rate per hour for each official and employee.

The contract shall establish requirements to ensure that the proposal of the successful offeror will be adhered to (as negotiated and agreed to) in each of these respects.

(c) In addition, the request for proposals and contract shall contain the following:

(1) A clause whereby the contractor warrants that the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) A clause which states that the Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the project;

(3) A clause which states that if the estimated number of man-hours of participating officials or employees is not used in the performance of the contract, the total contract price shall be reduced accordingly;

(4) A clause whereby the contractor agrees that any reports regarding organi-

zational matters (as required by the contract) shall include, when feasible, in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative; and

(5) All other applicable contract clauses.

§ 18–4.5205–3 Contract award and approval.

Contracting officers shall evaluate all proposals and make awards in accordance with the procedures applicable to negotiating contracts as set forth in Part 18–3 of this chapter. Prior to the award of any contract for management consultant or advisory services, the approval of the Director of Procurement shall be obtained in accordance with Subpart 18–50.1 of this chapter.

§ 18–4.5205–4 Copies of reports and recommendations.

Upon completion of the services required, the initiating office shall forward copies of all reports or recommendations made by the consulting firm or organization to the Management Analysis Division, Office of Administration, NASA Headquarters.

§ 18–4.5206 Format for requesting project approval for use of management consultant or advisory services.

REQUEST FOR PROJECT APPROVAL FOR MANAGEMENT CONSULTANT OR ADVISORY SERVICES

Date ----------

1. It is requested that approval be granted to contract with (check appropriate block):
   - [ ] Commercial Organization
   - [ ] Noncommercial Organization
   - [ ] University
   - [ ] Other

2. To: (Give detailed description of statement of work to be performed.)
3. The desired goals or results of this work are:
4. It is believed that this work will be beneficial to NASA and the Government for the following reasons (list reasons in concise language):
5. Statement of those organizational groups within NASA or other Government agencies known to originator or approving authority having any degree of capability in the field this work encompasses.
6. Give reasons or opinions why this work could or should not be conducted by NASA or other Government personnel.
7. State type and extent of agency participation necessary; that is, if agency personnel will have to work with those providing service, describe how many, types, tasks, etc. Also give description of type of support required, if any, such as office or other space, supplies, materials, etc.
8. Describe any travel anticipated or required in connection with the service.
9. Give estimate of time and number of personnel (all types) and any additional things or facilities required to produce desired results.
10. Give estimated costs and source of funds.
11. If request is for one designated organization to undertake the work, identify the organization in detail, give special qualifications, and conclusive reasons for the selection.
12. If request is not limited to one organization, list possible sources from whom posals might be solicited.
13. Give opinion of effect on NASA if request is not approved.
14. Signature, and organizational relationship of initiator of request.

Initiator -----

Division Head

PART 18–5—INTERDEPARTMENTAL PROCUREMENT

Subpart 18–5.7—Procurement Under the Economy Act From or Through Another Federal Agency

Subpart 18–5.8—Procurement of Certain Utility Services by Use of General Services Administration Area-Wide Public Utility Contracts

Sec.

18–5.800	Scope of subpart.
18–5.801	General.
18–5.802	Distribution of GSA area-wide public utility contracts and related publications.
18–5.803	Use of GSA area-wide public utility contracts.
18–5.804	Ordering under GSA area-wide public utility contracts.

Subpart 18–5.9—Use of General Services Administration Supply Sources

18–5.900	Scope and applicability of subpart.
18–5.901	Policy.
18–5.902	Limitation.
18–5.903	Authorization.
18–5.903–1	Basic authority.
18–5.903–2	Use of forms.
18–5.903–3	Distribution.
18–5.904	Procedure.
18–5.904–1	Purchase orders under Federal Supply Schedule contracts.
18–5.904–2	Purchase orders for GSA stores stock.
18–5.905	Furnishing information to contractors.
18–5.906	Form of authorization to contractors.
18–5.907	Contract clause.

Subpart 18–5.10—Procurement Through the Military Departments

18–5.1000	Scope of subpart.
18–5.1001	Authorization and policy.
18–5.1002	NASA-defense purchase request and acceptance.
18–5.1002–1	Preparation and use of form.
18–5.1002–2	Retention of property.
18–5.1002–3	Acceptance by Military Department.
18–5.1003	Changes in estimated total prices.
18–5.1004	Inquiries.
18–5.1005	Payments.

AUTHORITY: The provisions of this Part 18–5 issued under 42 U.S.C. 2473(b)(1).

Subpart 18–5.7—Procurement Under the Economy Act From or Through Another Federal Agency

§ 18–5.703 Procurement of helium under PL 86–777.

(a) NASA is required under the provisions of P.L. 86–777 (50 U.S.C. 161 et seq.; 74 Stat. 918) to obtain its major requirements for helium from the Secretary of the Interior.

(b) Each procurement office shall attempt to obtain their requirements (gaseous or liquid) from the Secretary of the Interior (Bureau of Mines) prior to placing contracts with a private contractor for supply of helium.

(c) Questions regarding the application of this policy should be directed to the Office of Procurement (Code KDF), NASA Headquarters.

Subpart 18–5.8—Procurement of Certain Utility Services by Use of General Services Administration Area-Wide Public Utility Contracts

§ 18–5.800 Scope of subpart.

This subpart prescribes policy and procedures for the procurement of certain utility services by use of General Services Administration (GSA) area-wide public utility contracts.

§ 18–5.801 General.

The General Services Administration enters into indefinite delivery type area-wide contracts with various utility companies for the furnishing of electric, natural and manufactured gas distributed by pipes, steam, sewage, or water service to all, or substantially all, Government agencies located within specified areas. GSA area-wide public utility contracts provide that the contractor will, upon receipt of an order in the form prescribed by the contract, furnish, without further negotiation as to rates and charges, the services involved in accordance with such of his established and filed rate schedules as are applicable to the service.

§ 18–5.802 Distribution of GSA area-wide public utility contracts and related publications.

A list of the utility services obtainable under GSA area-wide public utility contracts, including the area served and the

name of the contractor involved, is contained in GSA Circular No. 61, Revised. GSA also has available copies of the area-wide public utility contracts which include the required order form. Copies of GSA Circular No. 61 and GSA area-wide public utility contracts may be obtained, upon request, from General Services Administration, Transportation and Communication Service, Public Utilities Division, Washington, D.C., 20405.

§ 18–5.803 Use of GSA area-wide public utility contracts.

(a) Where GSA area-wide public utility contracts are adequate to meet the requirements of NASA installations for utility services, such services will be procured thereunder. In determining whether a GSA area-wide public utility contract is adequate to meet the requirements of the using installation, consideration should be given to (1) the area-wide contract rates viewed in light of the magnitude of the service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(b) Where an installation considers that a separately negotiated contract is more advantageous to the Government than the GSA area-wide public utility contract, a request will be submitted to the Director of Procurement (Code KDF), for a waiver of the requirement to use the GSA area-wide public utility contract. The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than the area-wide contract.

§ 18–5.804 Ordering under GSA area-wide public utility contracts.

When utility services are procured under GSA area-wide public utility contracts, the method of ordering prescribed in the appropriate GSA area-wide contract will be used. The form prescribed for ordering may be modified to satisfy fiscal and administrative requirements of NASA, and to contain such additional contract provisions as may be contemplated or permitted by the GSA area-wide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

Subpart 18–5.9—Use of General Services Administration Supply Sources by Prime Contractors in Performing Cost-Reimbursement Type Contracts

§ 18–5.900 Scope and applicability of subpart.

(a) This subpart prescribes policies and procedures for the guidance of contracting officers in authorizing the use of General Services Administration (GSA) supply sources (Federal Supply Schedule contracts and GSA stores stock) by prime contractors in performing cost-reimbursement type contracts.

(b) This subpart applies only to the procurement of supplies to be delivered in the United States, its possessions, or Puerto Rico.

§ 18–5.901 Policy.

In appropriate cases, the contracting officer may authorize contractors to utilize GSA supply sources in performing cost-reimbursement type contracts. Before issuing such an authorization, the contracting officer will determine that it is in the best interest of the Government, considering price, delivery, contract administration, and any other significant factors, including recommendations of the contractor.

§ 18–5.902 Limitation.

Contractors shall not be authorized to utilize GSA supply sources in connection with the performance of fixed-price type contracts, even though such contracts provide for price adjustment, escalation, redetermination, or cost-reduction incentive.

§ 18–5.903 Authorization.

§ 18–5.903–1 Basic authority.

Contractors shall be authorized to utilize GSA supply sources only when:

(a) Title to property ordered under Federal Supply Schedule contracts will pass to and vest in the Government directly from the Federal Supply Schedule contractor (rather than through the prime contractor); or

(b) Title to Government owned property ordered from GSA stores stock will remain in the Government.

§ 18–5.903–2 Use of forms.

Authorizations shall be in writing and shall cite the contract number, specify any applicable limitations on the authority, such as the period of eligibility, and contain any other pertinent information, including requirements relative to ordering, receiving, inspection, and payment. The written authorization shall be in substantially the same form as that set forth in § 18–5.906.

§ 18–5.903–3 Distribution.

Copies of each authorization shall be forwarded by the contracting officer to the General Services Administration, Federal Supply Service, Office of Supply Operation, General Services Building, Washington, D.C., 20405, and to the GSA regional office serving the geographical area in which the facilities of the authorized prime contractor are located.

§ 18–5.904 Procedure.

§ 18–5.904–1 Purchase orders under Federal Supply Schedule contracts.

Orders by contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization. Such orders shall be accompanied with a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor) and shall contain the statement set forth in § 18–5.906, paragraph (2) of the form.

§ 18–5.904–2 Purchase orders for GSA stores stock.

Orders by contractors for GSA stores stock shall be placed in accordance with the authorization. Such orders shall contain the statement set forth in § 18–5.906, paragraph 3 of the form.

§ 18–5.905 Furnishing information to contractors.

Contracting officers shall assist contractors in obtaining pertinent Federal Supply Schedules, the GSA Stores Stock Catalog and appropriate supplements thereto, and other relevant information.

§ 18–5.906 Form of authorization to contractors.

Subject: Authorization to Purchase from General Services Administration Supply Sources

---

(*Contractor's name*)

(*Address*)

1. You are hereby authorized to act for the Government as follows:

a. The purchasing of property for acquisition under Contract No. -------- which is available for purchase by Government agencies either directly from the General Services Administration Stores Depots or under Federal Supply Schedules, subject to the limitations set forth herein.

b. The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on property purchased under this authorization.

2.a. *Purchase Orders Under Federal Supply Schedule Contracts.* Order shall be placed in accordance with the terms and conditions of the attached Federal Supply Schedule and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule contractor) and shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration, in furtherance of United States Government Contract No. (Insert contract number), pursuant to written authorization dated ----------, *[ ]. Title to property delivered hereunder shall vest in the United States Government. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

b. *Purchase Orders for Items in the General Services Administration Stores Stock Catalog.* Orders shall be placed in accordance with the attached General Services Administration Stores Stock Catalog and this authorization. Include the address to which billings are to be sent. Bills are not issued by General Services Administration until after shipment has been made, and should therefore be paid promptly. Necessary adjustments, if any, will be made by General Services Administration subsequent to payment. All orders shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration, in furtherance of United States Government Contract No. (Insert contract number), pursuant to written authorization dated ----------*[ ]. Title to property delivered hereunder shall remain in the United States Government.

3. (Other provisions.)

4. This authority hereby granted is not transferable or assignable.

(*Contracting Officer*)

*Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

§ 18–5.907 Contract clause.

The following clause shall be included in all cost-reimbursement type contracts which, in the opinion of the contracting officer, offer opportunities for contractors to obtain supplies from GSA supply sources (Federal Supply Schedule Contracts and GSA stores stock). The last sentence of paragraph (b) of the clause shall be deleted in the case of facilities contracts which do not contain one of the "Government Property" clauses set forth in § 18–13.5 of this chapter.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES (FEBRUARY, 1962)

(a) The Contracting Officer may at any time, when he determines that it is in the best interest of the Government to do so, issue to the Contractor and the Contractor agrees to accept, an authorization to utilize General Services Administration supply sources in the performance of this contract. Such authorization shall be in writing and shall cite the number of this contract; specify any applicable limitations on the authority, including the period of eligibility; and contain any other pertinent information, such as requirements relative to ordering, receiving, inspection, and payment.

(b) Title to all property acquired from General Services Administration stores stock pursuant to an authorization issued under paragraph (a) above, for the cost of which the Contractor is entitled to be reimbursed under this contract, shall remain in the Government. Title to all property purchased from Federal Supply Schedule contractors pursuant to an authorization issued under paragraph (a) above, for the cost of which the Contractor is entitled to be reimbursed under this contract, shall pass to and vest in the Government upon delivery of such property to the Contractor by the Federal Supply Schedule contractor. All property acquired by the Contractor pursuant to paragraph (a) above shall be subject to the provisions of paragraphs (b) through (k) of the clause of this contract entitled "Government Property," unless this contract is for research and development with a nonprofit institution executed on a no-fee basis using the "Government-Furnished Property (Long Form)" clause in which case paragraphs (c) through (n) of that clause shall apply.

Subpart 18–5.10—Procurement Through the Military Departments

§ 18–5.1000 Scope of subpart.

This subpart sets forth policies and procedures, developed jointly by the National Aeronautics and Space Administration and the Department of Defense, with reference to procurement of supplies or services by NASA from or through the Military Departments.

§ 18–5.1001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the procurement services, personnel, equipment, and facilities of the Military Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Military Departments in the use of procurement services, equipment and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their procurement services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Department concerned has agreed to use its own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

§ 18–5.1002 NASA-Defense Purchase Request and acceptance.

§ 18–5.1002–1 Preparation and use of form.

(a) The NASA-Defense Purchase Request (NASA Form 532) shall be used by NASA procurement offices for requesting procurement of supplies or services from all activities of the Military Departments. The form shall not be used for requesting:

(1) Block transfers of excess property between NASA and the Military Departments; or

(2) Performance by the Military Departments of field service functions related to NASA contracts. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with 50.303.

(3) Stock items which the military departments normally purchase and stock for military use. Supplies of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the military department supplying activity or as otherwise mutually agreed upon by the parties.

(b) When procurement from or through the Air Force is requested, NASA Form 523 shall be sent to Headquarters, AF Systems Command, SCCPR, Andrews Air Force Base, Washington, D.C., 20331.

(c) *Instructions For Completing NASA Form 523.* The NASA-Defense Purchase Request is to be used by NASA to request the procurement of supplies or services by any activity of the Department of Defense. These instructions pertain to preparation and use of the form by NASA activities.

(1) *Block 5.* The original and five copies of the purchase request, each complete with all attachments, shall be forwarded to the DOD activity shown in this block.

(2) *Block 7b.* Describe the required services or supplies accurately and in sufficient detail to enable the purchasing activity to understand the requirement. When applicable, the particular NASA program and/or project to which the request or amendement pertains shall be indicated. Attachments may be used as required. For items of hardware stocked by the DOD, the item identification of the Army, Navy, or Air Force and the federal stock number shall be entered if known. When applicable, give the specification number, manufacturer's part number, and other descriptive data, such as the desired grade, style, type, color, size, rating, etc.

(3) *Block 8.* Attachments should be prepared in sufficient quantity so that each copy of a request is complete with a copy of every attachment listed therein.

(i) Shipping instructions. When names and addresses of consignees of all supplies to be delivered are not contained herein, or otherwise furnished, request for the issuance of shipping instructions shall be made to the appropriate NASA originating office not less than 30 days prior to date on which any of the articles is to be ready for shipment. Three copies of shipping documents shall be forwarded to the NASA originating office and each consignee.

(ii) Disposition of property. Include instructions for the disposition of any non-expendable or other residual property purchased with NASA funds.

(iii) Priority rating. Include applicable priority rating and claimant program identification (example: Priority Rating DO–A2). In procurement for DX programs, identification shall also include the unclassified program name.

(4) *Block 10.* If this request or any part of the supplies or services covered thereby is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457), copies of required clauses relating to "Property Rights in Inventions" together with appropriate instructions for the inclusion of such clauses in contracts shall be furnished the purchasing activity.

(5) *Block 12.* Cite appropriation symbol, cost coding, or any other accounting data to be included in the ensuing documentation.

(6) *Security Classification.* If the purchase request or any part thereof is classified, DD Form 254, "Security Requirements Check List," or other written notice of security requirements shall be prepared.

(7) *Changes.* All changes that affect the contents of the purchase request must be processed as a purchase request amendment. This includes such changes as a decrease in quantity, increase or decrease in funds, change in the specifications or in the part, stock or drawing numbers, etc. Such changes may be made initially by expeditious means such as telegraph or telephone communication, but each change shall be confirmed by a purchase request amendment. The original and five copies of purchase request amendments shall be forwarded to the DOD recipient of the original purchase request. In preparing an amendment, Blocks 1 through 6 must always be completed. Only those remaining blocks of the form that are applicable to the change or revision of the data in the purchase request or prior amendments thereto need

be filled in. The unused blocks, however, should have "N/C" inserted to reflect no change.

§ 18–5.1002–2 Retention of property.

In preparing a NASA-Defense Purchase Request, consideration shall be given to NASA's subsequent need for any nonexpendable equipment items acquired by the Military Departments which are reimbursed from NASA funds. When it is determined that retention of such equipment would be to NASA's advantage, the following clause shall be incorporated in the purchase request:

Title to all nonexpendable equipment having a unit cost in excess of $100 acquired in connection with this purchase request and for which reimbursement is made from NASA funds shall remain in NASA. All such items shall be identified and marked as NASA property. Records shall be maintained to the extent that periodic inventory reports can be submitted to NASA upon request. Listings of all excess, residual, and termination inventories shall be submitted to the NASA originating office for disposition instructions. (May 1961)

§ 18–5.1002–3 Acceptance by Military Department.

(a) Within 30 days after receipt of a NASA Form 523, the Military Department concerned will forward to the initiator of the request a DOD Acceptance of MIPR Form (DD Form 448–2) in quadruplicate in accordance with instructions contained in 32 CFR 5.1109. Each DOD Acceptance Form will show the action being taken or to be taken to fill the requirement and the name and complete address of the Department of Defense procuring activity for future direct contact by the initiator.

(b) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer Between Appropriations and/or Funds) shall reference the NASA-Defense Purchase Request number and the item number when appropriate.

§ 18–5.1003 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be procured for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request shall be forwarded by the NASA procurement office concerned to the DOD procuring activity.

§ 18–5.1004 Inquiries.

Inquiries and correspondence shall be directed to the DOD procuring activity referenced on the DD Form 448–2.

§ 18–5.1005 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments for supplies and services furnished to or procured for NASA shall be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request. Billings shall be supported in the same manner as billings between Military Departments.

PART 18–6—FOREIGN PURCHASES

Subpart 18–6.1—Buy American Act—Supply and Service Contracts

Sec.
18–6.100 Scope of subpart.
18–6.101 Definitions.
18–6.102 Statutory requirements.
18–6.103 Exceptions.
18–6.103–1 Use outside the United States.
18–6.103–2 Nonavailability in the United States.
18–6.103–3 Unreasonable cost or inconsistency with the public interest.
18–6.103–4 Scrap.
18–6.103–5 Canadian supplies.
18–6.104 Procedures.
18–6.104–1 Applicability.
18–6.104–2 Solicitation of bids and proposals.
18–6.104–3 Certificate.
18–6.104–4 Evaluation of bids and proposals.
18–6.104–5 Contract clause.
18–6.105 List of excepted articles, materials, and supplies.

Subpart 18–6.2—Buy American Act—Construction Contracts

18–6.200 Scope of subpart.
18–6.201 Definitions.
18–6.201–1 Construction.
18–6.201–2 Construction materials.
18–6.201–3 Components.
18–6.201–4 United States.
18–6.201–5 Domestic construction material.
18–6.201–6 Nondomestic construction material.
18–6.202 Statutory requirements.
18–6.203 Exceptions.
18–6.203–1 Nonavailability in the United States.
18–6.203–2 Unreasonable costs or impracticability.
18–6.204 Procedures.
18–6.204–1 Applicability.
18–6.204–2 Solicitation of bids and proposals.
18–6.204–3 Evaluation of bids and proposals.
18–6.204–4 Small business.
18–6.205 Penalty for violation.
18–6.206 List of excepted articles, materials, and supplies.
18–6.207 Contract clauses.

Subpart 18–6.4—Purchases from Soviet-Controlled Areas

18–6.401 Restrictions.
18–6.401–1 General policy.
18–6.401–2 Soviet-controlled areas.
18–6.401–3 Certain supplies of foreign origin.
18–6.401–4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.
18–6.401–5 Supplies from North Korea or China.
18–6.402 Exceptions.
18–6.403 Contract clause.

Subpart 18–6.6—Duty and Customs

18–6.601 Customs, duties on foreign purchases.

Subpart 18–6.7—Foreign Contract Procurement

18–6.700 Scope of subpart.
18–6.701 Definition.
18–6.702 Policy.
18–6.703 Assignment of responsibility for contract negotiation.
18–6.704 Procedure.
18–6.705 Assignment of contract administration.
18–6.706 Contracts with foreign nationals.

AUTHORITY: The provisions of this Part 18–6 issued under 42 U.S.C. 2473(b)(1).

Subpart 18–6.1—Buy American Act—Supply and Service Contracts

§ 18–6.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a–d) and the policies set forth in Executive Order 10582, dated December 17, 1954, with respect to supply and service contracts.

§ 18–6.101 Definitions.

As used in this subpart, the terms and meanings are set forth below.

(a) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts.

(b) "Components" means those articles, materials, and supplies which are directly incorporated in end products.

(c) "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States.

(d) "Domestic source end product" means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost

of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (1) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (2) as to which the Administrator has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(e) "Canadian end product" means an unmanufactured end product, mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components.

(f) "Foreign end product" means an end product other than a domestic source end product.

(g) "Domestic bid" means a bid or offered price for a domestic source end product, including transportation to destination.

(h) "Foreign bid" means a bid or offered price for a foreign end product, including transportation to destination, and duty (whether or not a duty-free entry certificate may be issued).

§ 18–6.102 Statutory requirements.

Except as provided in § 18–6.103, the Buy American Act requires that in the procurement of supplies and services only domestic source end products shall be acquired for public use. In determining whether an end product is a domestic source end product, only the end product and its components shall be considered.

§ 18–6.103 Exceptions.

§ 18–6.103–1 Use outside the United States.

The restrictions of the Buy American Act do not apply to articles, materials or supplies for use outside the United States.

§ 18–6.103–2 Nonavailability in the United States.

(a) The Buy American Act does not apply to articles, materials or supplies of a class or kind which the Government has determined are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Such classes or kinds of articles, materials, or supplies are included in the list set forth in § 18–6.105.

(b) Contracting officers are authorized to make additional determinations of nonavailability both prior to entering into contracts and in the course of contract administration: *Provided, however,* That in the latter case the Government receives adequate consideration. A copy of each determination of nonavailability will be included in the contract file.

(c) The following is the format for nonavailability determinations made by contracting officers:

Determination of Nonavailability

Pursuant to the authority contained in Section 2, Title III, of the Act of March 3, 1933 (popularly called the Buy American Act (41 U.S.C. 10a–d)), and authority delegated to me by 6.103–2(b), I hereby find:

a. (Insert a description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

b. (Enter the name and address of proposed contractor or supplier, and country of origin of the item or items.)

c. (Include a brief statement of the necessity for the procurement.)

d. (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin. If there is no known domestic item or items which can be used as a reasonable substitute, a statement to this effect will be made.)

Based upon these findings, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that it be of domestic origin is not applicable to this procurement, since said procurement is within the nonavailability exception stated in the Buy American Act. Authority is granted to procure the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $_____, including duty and transportation costs to destination.

_____
(Date)

_____
(Contracting Officer)

§ 18–6.103–3 Unreasonable costs or inconsistency with the public interest.

When it is determined by the Administrator that the cost of a domestic source end product would be unreasonable or that its acquisition would be inconsistent with the public interest, the restrictions of the Buy American Act do not apply (see §§ 18–6.103–5 and 18–6.104–4).

§ 18–6.103–4 Scrap.

Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

§ 18–6.103–5 Canadian supplies.

(a) The Administrator, by NASA Management Instruction 3–3–11, has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of certain supplies mined, produced, or manufactured in Canada. Accordingly, contracting officers shall:

(1) Evaluate all bids and proposals offering Canadian end products on a parity with bids and proposals offering domestic source end products, except that applicable duty (whether or not a duty-free entry certificate may be issued) shall be included in evaluating such bids and proposals offering Canadian end products; and

(2) Treat all components mined, produced, or manufactured in Canada as though they were mined, produced, or manufactured in the United States, except that, in evaluating bids and proposals containing such components, applicable duty (whether or not a duty-free entry certificate may be issued) shall be included.

(b) The procedures set forth in paragraph (a) of this section do not apply to or affect (1) items listed in § 18–6.105 or (2) items determined to be nonavailable in accordance with the procedures set forth in § 18–6.103–2.

§ 18–6.104 Procedures.

§ 18–6.104–1 Applicability.

The procedures in this § 18–6.104 apply to all contracts involving the procurement of supplies, except contracts exclusively for articles, materials, or supplies for use outside the United States. For Canadian supplies, see § 18–6.103–5(a).

§ 18–6.104–2 Solicitation of bids and proposals.

Invitations for bids and requests for proposals shall state that specific information as to articles, materials, and supplies excepted from the Buy American Act (see § 18–6.105) is available to prospective contractors upon request.

§ 18–6.104–3 Certificate.

Invitations for bids and requests for proposals shall require that each bid or proposal include a certificate substantially as follows:

Buy American Certificate (January 1964)

The bidder or offeror hereby certifies that each end product, except the end products excluded below, is a domestic source end product (as defined in the contract clause entitled Buy American Act); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded Items: _____

§ 18–6.104–4 Evaluation of bids and proposals.

(a) The Administrator, by NASA Management Instruction 3–3–10, has determined that where the procedures outlined in paragraphs (b), (c), and (d) of this section, result in the acquisition of foreign end products, the acquisition of domestic source end products would be (1) unreasonable in cost or (2) inconsistent with the public interest (see § 18–6.103–3). These procedures do not apply to the evaluation of bids and proposals offering Canadian end products; such bids and proposals shall be evaluated as provided in § 18–6.103–5(a)(1).

(b) Except as provided in § 18–6.103–5(a)(1), bids and proposals shall be evaluated so as to give preference to domestic bids. Award shall be made to the low acceptable bidder, after applying the procedures set forth in paragraph (c)

of this section, except for bids or proposals requiring decision of the Administrator, in accordance with paragraph (d) below. When more than one line item is offered in response to an invitation for bids or request for proposals, the appropriate percentage factor set forth in paragraph (c) below shall be applied, for evaluation purposes, on an item-by-item basis, except that such percentage factor may be applied to any group of items when the invitation for bids or request for proposals specifically provides that award may be made on a particular group of items.

(c) For purposes of evaluating bids and proposals, a factor of 6 percent of the amount of each foreign bid or proposal (which does not offer Canadian end products) shall be added to such bid or proposal. If, after applying such 6 percent factor, the low acceptable domestic bid or proposal is the low bid or proposal, award shall be made to the low domestic bidder or offeror. If, after applying such 6 percent factor, the low acceptable foreign bid or proposal is the low bid or proposal, award shall be made to such low foreign bidder or offeror, except that:

(1) When the firm submitting the low acceptable domestic bid or proposal is a small business or labor surplus area concern, or both, and its bid or proposal exceeds $100,000, the proposed award shall be submitted through the Office of Procurement to the Administrator for decision; or

(2) When the firm submitting the low acceptable domestic bid or proposal is a small business or labor surplus area concern, or both, and its bid or proposal is $100,000 or less, a factor of 12 percent (in lieu of the 6 percent factor) of the amount of the low foreign bid or proposal shall be added to such low foreign bid or proposal, and award made to the low bidder or offeror: *Provided, however,* That when small purchase procedures (see Subpart 18–3.6) are used, the 6 percent factor shall apply.

(d) The proposed award shall be submitted to the Administrator for decision if:

(1) Required by paragraph (c)(1) above;

(2) Rejection of an acceptable low foreign bid or proposal is considered necessary to protect essential national security interests, such as maintenance of a mobilization base; or

(3) Rejection of any bid or proposal is considered necessary for other reasons of the national interest.

(e) The following are examples of evaluation of bids and proposals in accordance with the provisions of paragraphs (b) and (c) of this section:

Example 1: Price differential of 6 percent or less between low foreign (non-Canadian) and low domestic bid or proposal:

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$19,000
Import duty		600
Total	20,000	19,600
6 percent differential		1,176
Total	20,000	20,776

The low domestic bid is not unreasonable; award would be made to the low domestic bidder (see paragraph (c) of this section).

Example 2: Price differential in excess of 6 percent between low foreign (non-Canadian) and low domestic bid or proposal, and small business and/or labor surplus area concerns are not involved.

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$17,000
Import duty		500
Total	20,000	17,500
6 percent differential		1,050
Total	20,000	18,550

The low domestic bid is unreasonable; award would be made to the low foreign bidder (see paragraph (c) of this section).

Example 3: Low domestic bidder or offeror is a small business and/or labor surplus area concern; the low domestic bid or proposal exceeds the low foreign (non-Canadian) bid or proposal by more than 6 percent, and small purchase procedures are not involved.

Item	Low Foreign Bids (Include transportation to destination and duty) A Company	B Company	Low Domestic Bids (Include transportation to destination) C Company	D Company	E Company	Difference (percent)
1	$20,000		$24,000			20
2	40,000		46,000			15
3		$20,000		$22,200		11
4	20,000				$22,600	13
5		30,000		32,700		9
6	20,000		22,000			10
7	10,000		10,700			7
8	5,000				6,500	30
			102,700			

A. In the case of Items 1, 2, 6 and 7 in the example, proposed awards would be submitted to the Director of Procurement for decision by the Administrator since (1) the low acceptable domestic bid exceeds the low acceptable foreign bid plus 6 percent on an item-by-item basis, (2) the low domestic bidder is a small business or labor surplus area concern, and (3) its bid exceeds $100,000 (see paragraph (c)(1) of this section).

B. In the case of Items 3 and 5 in the example, award would be made to the low domestic bidder, since (1) the differential is less than 12 percent on an item-by-item basis, (2) the low domestic bidder is a small business or labor surplus area concern, and (3) its bid is less than $100,000 (see paragraph (c)(2) of this section).

C. In the case of Items 4 and 8 in the example, award would be made to the low foreign bidder, since (1) the differential exceeds 12 percent on an item-by-item basis, (2) the low domestic bidder is a small business or labor surplus area concern and (3) its bid is less than $100,000 (see paragraph (c)(2) of this section).

§ 18–6.104–5 Contract clause.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth below.

BUY AMERICAN ACT (SEPTEMBER 1961)

(a) In acquiring end products, the Buy American Act (41 U.S.C. 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Administrator determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Administrator determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

§ 18–6.105 List of excepted articles, materials and supplies.

The articles, materials, and supplies listed below may be acquired for public use without regard to country of origin, except as provided in Subpart 18–6.4. The Administrator, by NASA Management Instruction 3–3–10, has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to petroleum included in the list below. The remaining articles, materials, and supplies in the list below are included on the

basis of nonavailability (see § 18–6.103–2(a)).

Acetylene, black.
Antimony, as metal or oxide.
Asbestos, amosite.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Cadmium, ores and flue dust.
Calcium cyanamide.
Chalk, English.
Chrome ore or chromite.
Cobalt, in cathodes, rondelles, or other primary forms.
Cork, wood or bark and waste.
Diamonds, industrial.
Graphite, natural, crystalline, crucible grade.
Jute and jute burlaps.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Petroleum, crude oil; petroleum, finished products; and petroleum, unfinished oils.
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
Quartz crystals.
Rubber, crude and latex.
Shellac.
Tin, in bars, blocks, and pigs.
Wax, carnauba.

Subpart 18–6.2—Buy American Act—Construction Contracts

§ 18–6.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10 a–d) and the policies set forth in Executive Order 10582, dated December 17, 1954, with respect to construction contracts.

§ 18–6.201 Definitions.

As used in this subpart, the terms and meanings are set forth below.

§ 18–6.201–1 Construction.

"Construction" means construction, alteration, or repair of any public building or public work in the United States.

§ 18–6.201–2 Construction materials.

"Construction materials" means articles, materials, and supplies which are brought to the construction site for incorporation in the building or work.

§ 18–6.201–3 Components.

"Components" means those articles, materials, and supplies which are directly incorporated in construction materials.

§ 18–6.201–4 United States.

"United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States.

§ 18–6.201–5 Domestic construction material.

"Domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the construction material in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 18–6.201–6 Nondomestic construction material.

"Nondomestic construction material" means a construction material other than a domestic construction material.

§ 18–6.202 Statutory requirements.

Except as provided in § 18–6.203, the Buy American Act requires that in the performance of contracts for construction, only domestic construction materials shall be used. In determining whether construction material is domestic construction material, only the construction material and its components shall be considered.

§ 18–6.203 Exceptions.

§ 18–6.203–1 Nonavailability in the United States.

(a) The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality (see § 18–6.206).

(b) The authority to make additional determinations of nonavailability, is described in § 18–6.103–2(b).

(c) The format for nonavailability determinations is set forth in § 18–6.103–2(c).

§ 18–6.203–2 Unreasonable costs or impracticability.

The restrictions of the Buy American Act do not apply when it is determined by the Administrator that the use of a particular domestic construction material would (1) unreasonably increase the cost, or (2) be impracticable (see § 18–6.204–3).

§ 18–6.204 Procedures.

§ 18–6.204–1 Applicability.

The procedures in this § 18–6.204 apply to all contracts for construction in the United States, except contracts executed on Standard Form 19.

§ 18–6.204–2 Solicitation of bids and proposals.

Invitations for bids and requests for proposals for construction shall include the following provision:

INFORMATION REGARDING BUY AMERICAN ACT (JANUARY 1964)

(a) The Buy American Act (41 U.S.C. 10a–d) generally requires that only domestic construction materials be used in the performance of this contract. This requirement does not apply to construction materials or their components as set forth below:
(Insert list here including the items set forth in § 18–6.206)

(b)(1) Furthermore, bids or proposals offering the use of additional nondomestic construction materials may be acceptable for award if the Government determines that the use of comparable domestic construction materials is impracticable or would unreasonably increase the cost or that domestic construction materials (in sufficient and reasonably available commercial quantities and of a satisfactory quality) are unavailable. Reliable evidence shall be furnished justifying such use of additional nondomestic construction materials.

(2) Where it is alleged that the use of domestic construction materials would unreasonably increase the cost:

(i) data shall be included, based on a reasonable canvass of suppliers, demonstrating that the cost of each such domestic construction material would exceed by more than 6 percent the cost of the comparable nondomestic construction material. (All costs of delivery to the construction site shall be included, as well as any applicable duty.)

(ii) for evaluation purposes, 6 percent of the cost of all additional nondomestic construction materials which qualify under (1) above will be added to the bid or proposal.

(3) When offering additional nondomestic construction materials, bids or proposals may also offer, at stated prices, any available comparable domestic construction materials, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under (1) above will cause rejection of the entire bid.

§ 18–6.204–3 Evaluation of bids and proposals.

(a) *Determination.* The Administrator, by NASA Management Instruction 3–3–10, has determined that where the procedures set forth in paragraph (b) below result in the use of nondomestic construction materials, the use of domestic construction materials would unreasonably increase the cost (see § 18–6.203–2).

(b) *Unreasonable cost.* If a bid or proposal is submitted in accordance with paragraph (b) of the provision set forth in § 18–6.204–2, and if such bid or proposal would be the low acceptable bid or proposal but for the Buy American Act, award shall be made on such bid or proposal if all the following conditions are satisfied:

(1) The bid or proposal specifically designates the nondomestic construction materials (not listed as exceptions in the invitation for bids or request for proposals) proposed for use;

(2) As to each such nondomestic construction material, accompanying data show that the cost of any available acceptable domestic construction material, delivered at the construction site, would exceed by more than six percent the cost of the designated nondomestic construction material delivered at the construction site (including any applicable duty);

(3) As to each such nondomestic construction material, the contracting officer is satisfied that the showing required by subparagraph (2) of this paragraph is correct as of the date of the opening of bids or proposals; and

(4) The bid or proposal is low after adding, for evaluation purposes, to such bid or proposal six percent of the cost of all nondomestic construction materials (delivered at the construction site and including any applicable duty) which are offered in such bid or proposal and which qualify under subparagraphs (1) through (3) of this paragraph.

(c) *Impracticability.* If a bid or proposal is submitted in accordance with paragraph (b) of the provisions set forth in § 18–6.204–2, and if such bid or proposal would be the low acceptable bid or proposal but for the Buy American Act, the proposed award shall be submitted together with all pertinent information and full justification for such action to the Director of Procurement for decision by the Administrator, if the following conditions exist:

(1) The bid or proposal specifically designates the nondomestic construction materials (not listed as exceptions in the invitation for bids or request for proposals) proposed for use; and

(2) As to each such nondomestic construction material, accompanying data show that it would be impracticable to use domestic construction materials.

(d) If a contract is to be awarded under paragraph (b) or (c) of this section, the contracting officer shall place in the contract file (1) a copy of the data and justification in the case of an exception under paragraph (b) above, or (2) a copy of the Administrator's finding of impracticability in the case of an exception under paragraph (c) of this section, and copies thereof shall be available for public inspection.

§ 18–6.204–4 Small business.

Nothing in § 18–6.204–3 shall affect the authority or responsibility of the NASA to place a fair proportion of its total contracts with small business concerns.

§ 18–6.205 Penalty for violation.

If the Administrator finds that in the performance of a construction contract there has been a failure to comply with the clause in the contract entitled "Buy American Act," he shall make public his findings, including therein the name of the contractor obligated under the contract, and no other contract for construction in the United States or elsewhere shall be awarded to such contractor, or to subcontractors, materialmen, or suppliers with whom such contractor is associated or affiliated within a period of three years after such finding is made public.

§ 18–6.206 List of excepted articles, materials, and supplies.

The articles, materials, and supplies listed below may be used in construction without regard to country of origin, except as provided in Subpart 18–6.4, on the basis of the nonavailability provision of the Buy American Act (see § 18–6.203–1).

Antimony, as metal or oxide.
Asbestos, amosite.
Bismuth.
Cadmium, ores and flue dust.
Chalk, English.
Chrome ore or chromite.
Cobalt, in cathodes, rondelles, or other primary forms.
Cork, wood or bark and waste.
Damar gum.
Graphite, natural, crystalline, crucible grade.
Jute and jute burlap.
Kaurigum.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Rubber, crude and latex.
Shellac.
Tin, in bars, blocks, and pigs.

§ 18–6.207 Contract clauses.

(a) The clause set forth below shall be included in all contracts for construction, and any articles, materials, and supplies which have been the subject of additional determinations pursuant to § 18–6.203–1 shall be listed thereunder.

NONDOMESTIC CONSTRUCTION MATERIALS (SEPTEMBER 1962)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to construction materials or their components as set forth below:

(Insert list here including the items set forth in § 18–6.206)

(b) If a contract is to be awarded under § 18–6.204–3 (b) or (c) and the use of designated nondomestic construction materials is to be permitted, the designated nondomestic construction materials shall be listed under the clause required by paragraph (a) of this section.

(c) The clause set forth below shall be inserted in all contracts for construction except those executed on Standard Form 19 and NASA Form 177.

BUY AMERICAN (SEPTEMBER 1962)

(a) *Agreement.* In accordance with the Buy American Act (41 U.S.C. 10a–d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) *Domestic construction material.* "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) *Domestic component.* A component shall be considered to have been "mined, produced or manufactured in the United States" (regardless of its sources in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Subpart 18–6.4—Purchases From Soviet-Controlled Areas

§ 18–6.401 Restrictions.

§ 18–6.401–1 General policy.

Generally, supplies originating from sources within Soviet-controlled areas shall not be acquired for public use, notwithstanding the provisions of Subparts 18–6.1 and 18–6.2 and NASA contractors and subcontractors shall not acquire for use in the performance of any NASA contract or subcontract thereunder any supplies or services originating from Soviet-controlled areas.

§ 18–6.401–2 Soviet-controlled areas.

For the purpose of this subpart, Soviet-controlled areas are the following:

Albania.
Bulgaria.
China, excluding Taiwan (Formosa), but including Manchuria, Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, the former Kwantung Leased Territory, the present Port Arthur Naval Base Area, and Liaoning Province.
Communist-controlled area of Viet Nam and Communist-controlled area of Laos.
Cuba.
Czechoslovakia.
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).
Estonia.
Hungary.
Latvia.
Lithuania.
North Korea.
Outer Mongolia.
Poland and Danzig.
Rumania.
Union of Soviet Socialist Republics.

§ 18–6.401–3 Certain supplies of foreign origin.

The following supplies, if of foreign origin and however processed, shall be presumed to have originated from Soviet-controlled (Chinese) sources and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico, or (b) the supplies are acquired directly from the countries indicated:

Bamboo, split	None.
Braids, straw	Italy, Japan.
Bristles, hog, including such bristles in knots or other processed condition.	None.

Brushes, paint (including parts thereof) containing hog bristles, if any such bristle is more than 1½ inches in total length or more than 1¼ inches in length out of the ferrule.	None.
Eggs, poultry:	
Whole in the shell, other than chicken	None.
Whole, dried	None.
Albumen, dried	None.
Yolks, dried	None.
Floor coverings, grass and straw, including sea-grass mats and squares.	Japan.
Fur skins:	
Goat and kid	Argentina, Ethiopia (including Eritrea), Iran, Iraq.
Kolinsky	Republic of Korea.
Weasel	Canada.
Garments, Chinese type	None.
Jade, stones, cut but not set and suitable for use in jewelry.	None.
Menthol, natural and synthetic (other than racemic)	Brazil.
Silk, piece goods, tussah and muga	None.
Silk, tussah and muga	None.
Tea, Chinese type	Formosa.
Tung oil	Argentina, Brazil, Paraguay.
Walnuts	France, Iran, Italy, Turkey.

§ 18–6.401–4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.

The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any Soviet-controlled area (see § 18–6.401–2), shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico:

Agar-agar.
Bamboo:
  Bags, baskets, and other manufactures, excluding furniture.
  Poles and sticks.
Brocades and brocade articles.
Camphor, natural and synthetic.
Camphor oil, natural and synthetic.
Carpets.
Castor oil.
Chinaware, other than Dresden ware and Meissen ware.
Citronella oil.
Cotton manufactures.
Cotton waste.
Earthenware.
Edible marine products.
Embroideries and embroidered articles.
Feather manufactures.
Glass, sheet (window).
Graphite.
Hair nets, regardless of the material from which made.
Handkerchiefs.
Hardware manufactures, including furniture other than bentwood furniture.
Hats, paper.
Honey.
Ivory manufactures.
Lace and lace articles.
Linen manufactures, excluding wearing apparel other than wearing apparel made in whole or in part of brocade, embroidery, or lace.
Ores and metals:
  Antimony.
  Bismuth.
  Quicksilver.
  Molybdenum.
  Tin.
  Tungsten.
Peanuts and peanut products.
Poultry, including pigeons, frozen or otherwise prepared or preserved.
Ramie.
Rugs.
Sea-grass and straw manufactures, excluding floor covering.
Sesame, oil and seed.
Shoes, leather-soled with non-leather upper, except ladies' high-heel shoes.
Silk:
  Raw and manufactures other than Western style suits and Indian saris.
  Waste.
Skins, deer and goat.
Stones, semiprecious, and manufacture thereof, including jewelry.
Tapestries, including needlework tapestries.
Tapioca, including tapioca flour.

§ 18–6.401–5 Supplies from North Korea or China.

All supplies, however processed, which are or were located in or transported from or through North Korea or China (as described in § 18–6.401–2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico.

§ 18–6.402 Exceptions.

(a) Exceptions from the general policy will be made only in accordance with paragraphs (b) and (c) below. Moreover, such exceptions shall be made only in cases of emergency, or where supplies are not available from any other source and a substitute supply is not acceptable, or in other unusual situations.

(b) Supplies other than those whose procurement is prohibited by §§ 18–6.401–3, 18–6.401–4, and 18–6.401–5, originating from sources within Soviet-controlled areas (see § 18–6.401–2), may be procured only when:

(1) The purchase is for $2,500 or less and the contracting officer determines there is a need for an exception in accordance with the procedures set forth in paragraphs (d)(1)(i) or (2)(i) of this section; or

(2) The purchase is for more than $2,500 and an exception is approved by the Administrator in accordance with the procedures set forth in paragraph (d)(1)(ii) or (2)(ii) of this section.

(c) Supplies whose procurement is prohibited by §§ 18–6.401–3, 18–6.401–4, and 18–6.401–5 may be acquired if the acquisition is approve by an authorized Treasury Department representative. Where a request for such approval has been denied by a Treasury Department representative, an appeal may be made by the Administrator to the Secretary of the Treasury when unusual circumstances appear to warrant a departure from the general policy. Such appeals, with all pertinent information, shall be submitted through the Office of Procurement (Code KDR).

(d) *Procedures.* (1) When it is proposed to procure supplies originating from sources within Soviet-controlled areas for public use within the United States (as defined in § 18–6.101(c)), or when a construction contractor proposes to use such supplies in the performance of a contract for construction within the United States (as defined in § 18–6.201–1), the following procedures shall be followed:

(i) If the proposed procurement of such supplies does not exceed $2,500, the contracting officer shall make a determination of nonavailability, as authorized in § 18–6.103–2 or § 18–6.203–1. This determination shall include, in addition to the findings outlined in the determination format set forth in § 18–6.103–2(c), a finding to the effect that there is no known item or items from sources within non-Soviet-controlled areas which can be used as a reasonable substitute. Such determination shall be made a part of the contract file.

(ii) If the proposed procurement of such supplies exceeds $2,500, the contracting officer shall prepare a determination of nonavailability for signature by the Administrator. The format of the determination set forth in § 18–6.103–2(c) shall be used and such determination shall include, as an additional finding, a statement to the effect that there is no known item or items from sources within non-Soviet-controlled areas which can be used as a reasonable substitute. Such determination shall be forwarded, in triplicate, to the Office of Procurement.

(2) When it is proposed to procure supplies originating from sources within Soviet-controlled areas for public use elsewhere than within the United States (as defined in § 18–6.101(c)), or when a construction contractor proposes to use such supplies in the performance of a contract for construction elsewhere than within the United States, the following procedures shall be followed:

(i) If the proposed procurement of such supplies does not exceed $2,500, the contracting officer shall make a written finding setting forth the unusual situation, such as an emergency or the nonavailability of acceptable substitute supplies of domestic or non-Soviet-controlled area origin, which justifies the procurement of supplies originating in a Soviet-controlled area. Such finding shall be made a part of the contract file.

(ii) If the proposed procurement of such supplies exceeds $2,500, the contracting officer shall make a written finding, as described in subdivision (i) of this subparagraph. Such finding shall be forwarded, in triplicate, to the Office of Procurement for approval by the Administrator of the exception authorizing the proposed procurement.

§ 18–6.403 Contract clause.

(a) Except as provided in paragraph (b) of this section, in contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its possessions, or Puerto Rico, the Soviet-controlled areas listed in § 18–6.401–2 shall be set forth in the contract schedule and the following clause shall be included in the contract:

SOVIET-CONTROLLED AREAS (SEPTEMBER 1962)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Scehdule of this contract, or transported from or through Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including this subparagraph (b) and the Soviet-controlled areas listed in the Schedule, in all subcontracts hereunder.

(b) The requirements of paragraph (a) of this section do not apply to purchase orders for small purchases (see Subpart 18–3.6) when there is other reasonable assurance of compliance with the policy set forth in this subpart.

Subpart 18–6.6—Duty and Customs

§ 18–6.601 Customs, duties on foreign purchases.

(a) Duty must ordinarily be paid in connection with the importation of supplies purchased by NASA outside the United States. However, the Military Departments have authority to exempt purchases from the payment of duty under 10 U.S.C. 2383, permitting "emergency purchases of war materials abroad." Furthermore, certain supplies (not including equipment) for vessels or aircraft operated by the United States are also exempt from duty under 19 U.S.C. 1309. Accordingly, when a Military Department makes a purchase on behalf of NASA, or when NASA is making a purchase for a Military Department, the above duty-free exemption authorities shall be used to the maximum extent practicable. The policies and procedures for effecting duty-free entry are set forth in 32 CFR Part 6, Subpart F.

(b) In addition, in the case of articles intended solely for testing, experimental, or review purposes, which are not imported for sale or sale on approval, use of 19 U.S.C. 1308(4) should be considered. This authority permits duty-free entry of the aforementioned items for a a period up to three years, at which time the imported article must be either exported or destroyed. The imported article itself must be the object of the test, experiment, or review; it is not sufficient that the article be used as an aid in the performance of tests, experiments, or reviews.

Subpart 18–6.7—Foreign Contract Procurement

§ 18–6.700 Scope of subpart.

This subpart prescribes policy and procedures relating to the negotiation of foreign contracts.

§ 18–6.701 Definition of foreign contract procurement.

The term "foreign contract procurement" as used in this subpart means the procurement by negotiation of supplies or services, including construction work and contracts for research and development, where the work is to be performed outside the United States, its possessions, and the Commonwealth of Puerto Rico, by a foreign government or instrumentality thereof, or a foreign private contractor. The term does not include the following:

(a) Negotiation of government-to-government agreements;

(b) Negotiation of contracts with domestic concerns which involves work to be performed outside the United States, its possessions, and the Commonwealth of Puerto Rico;

(c) Contracts with the Canadian Commercial Corporation pursuant to Basic Agreement No. NASw–301; or

(d) Procurement of books and periodicals from foreign sources of supply.

§ 18–6.702 Policy.

Foreign contract procurement is a specialized area which often requires involved negotiation with instrumentalities of foreign governments. Some of the requirements for contract clauses imposed by United States laws conflict with statutory prohibitions imposed by foreign countries. The resolution of these issues generally involves close coordination between the Office of International Programs and the Office of General Counsel, NASA Headquarters, and the Department of State. Accordingly, it is the policy of NASA that the responsibility for foreign contract procurement be centralized at NASA Headquarters.

§ 18–6.703 Assignment of responsibility for contract negotiation.

The Headquarters Contracts Division (Code BC) in conjunction with the Offices of International Programs and General Counsel is responsible for negotiating and executing contracts with foreign governments and private foreign organizations. This assignment of responsibility is specifically limited to foreign contract procurement, as defined in § 18–6.701.

§ 18–6.704 Procedure.

A Headquarters or field installation technical office requiring a foreign contract procurement to be made will submit a properly approved Purchase Request (NASA Form 404 or similar form), through channels, to the Headquarters Contracts Division, NASA Headquarters (Code BC), for procurement action. In accordance with §18–7.000, contract forms and clauses to be used in foreign contract procurement will be as prescribed on a case-by-case basis by the Director of Procurement.

§ 18–6.705 Assignment of contract administration.

Assignment of contract administration responsibility will be made by agreement between the initiating office and the Headquarters Contracts Division. Since principal responsibility for the monitoring of contractor progress and performance generally rests with a field installation, the Headquarters Contracts Division normally will designate the procurement officer of the cognizant field installation as his authorized representative for purposes of contract administration.

§ 18–6.706 Contacts with foreign nationals.

(a) Proposals by NASA staff members which involve program or contract possibilities with foreign nationals shall be coordinated with the Office of International Programs, NASA Headquarters, before any contacts are made with foreign nationals.

(b) Informal discussions between NASA staff members and foreign nationals could give rise to expectations concerning program or contract possibilities which are not supported by program requirements. Such situations must be avoided to preclude possible embarrassment to the United States, as well as to NASA.

(c) Requests or offers by foreign nationals to NASA staff members on program or contract matters shall be reported promptly to the Office of International Programs.

PART 18–7—CONTRACT CLAUSES

Sec.
18–7.000 Scope of part.

Subpart 18–7.1—Clauses for Fixed-Price Supply Contracts

18–7.100 Scope of subpart.
18–7.102 Applicability.
18–7.103 Required clauses.
18–7.103–1 Definitions.
18–7.103–2 Changes.
18–7.103–3 Extras.
18–7.103–4 Variation in quantity.
18–7.103–5 Inspection.
18–7.103–6 Responsibility for supplies.
18–7.103–7 Payments.
18–7.103–8 Assignment of claims.
18–7.103–9 Additional bond security.
18–7.103–10 Federal, State, and local taxes.
18–7.103–11 Default.
18–7.103–12 Disputes.
18–7.103–13 Renegotiation.
18–7.103–15 Soviet-controlled areas.
18–7.103–16 Work Hours Act of 1962—overtime compensation.
18–7.103–17 Walsh-Healey Public Contracts Act.
18–7.103–18 Equal opportunity.
18–7.103–19 Officials not to benefit.
18–7.103–20 Covenant against contingent fees.
18–7.103–21 Termination for convenience of the Government.
18–7.103–22 Authorization and consent.
18–7.103–23 Notice and assistance regarding patent and copyright infringement.
18–7.103–53 Interest.
18–7.103–54 Order of precedence.
18–7.104 Clauses required to be used when applicable.
18–7.104–1 Clauses for contracts involving construction work.
18–7.104–3 Buy American Act.
18–7.104–4 Notice to the Government of labor disputes.
18–7.104–5 Patent indemnity.
18–7.104–6 Filing of patent applications.
18–7.104–7 New technology.
18–7.104–9 Rights in data.
18–7.104–12 Security requirements.
18–7.104–14 Utilization of small business concerns.
18–7.104–15 Examination of records.
18–7.104–17 Convict labor.
18–7.104–18 Priorities, allocations, and allotments.
18–7.104–20 Utilization of concerns in labor surplus areas.
18–7.104–21 Limitation on withholding of payments.
18–7.104–22 Small business subcontracting program.
18–7.104–23 Subcontracts.
18–7.104–24 Government-furnished property.
18–7.104–25 Special tooling.
18–7.104–26 Changes to make-or-buy program.
18–7.104–27 Payment for overtime and shift premiums.
18–7.104–35 Progress payments.
18–7.104–36 Preference for United States-flag air and ocean services.
18–7.104–40 Competition in subcontracting.
18–7.104–41 Contractor and subcontractor cost or pricing data.
18–7.104–50 Data requirements.
18–7.104–51 Approval of contract.
18–7.104–57 Implied licenses.
18–7.105 Additional clauses.
18–7.105–1 Alterations in contract.
18–7.105–5 Liquidated damages.
18–7.105–6 Bill of materials.
18–7.105–55 Warranty.
18–7.105–56 Guaranty.
18–7.106 Price escalation clauses (established prices).
18–7.106–1 Escalation clause for basic steel, aluminum, brass, bronze, or copper mill products.
18–7.106–2 Escalation clause for nonstandard steel items.
18–7.106–3 Escalation clause for standard supplies.
18–7.106–4 Escalation clause for semistandard supplies.
18–7.107 Price escalation clause (labor and material).
18–7.108 Incentive price revision clause.
18–7.109 Price redetermination.

Subpart 18–7.2—Clauses for Cost-Reimbursement Type Supply Contracts

18–7.200 Scope of subpart.
18–7.202 Applicability.
18–7.203 Required clauses.
18–7.203–1 Definitions.
18–7.203–2 Changes.
18–7.203–3 Limitation of cost.
18–7.203–4 Allowable cost, fixed fee and payment.
18–7.203–5 Inspection of supplies and correction of defects.
18–7.203–6 Assignment of claims.
18–7.203–7 Records.
18–7.203–8 Subcontracts.
18–7.203–9 Utilization of small buisness concerns.
18–7.203–10 Termination.
18–7.203–11 Excusable delays.
18–7.203–12 Disputes.
18–7.203–13 Renegotiation.
18–7.203–15 Convict labor.
18–7.203–16 Work Hours Act of 1962—Overtime compensation.
18–7.203–17 Walsh-Healey Public Contracts Act.
18–7.203–18 Equal opportunity.
18–7.203–19 Officials not to benefit.
18–7.203–20 Covenant against contingent fees.
18–7.203–21 Government property.
18–7.203–22 Insurance—liability to third persons.
18–7.203–23 Authorization and consent.
18–7.203–24 Notice and assistance regarding patent and copyright infringement.
18–7.203–25 Soviet-controlled areas.
18–7.203–26 Utilization of concerns in labor surplus areas.
18–7.203–27 Payment for overtime and shift premiums.
18–7.203–28 Competition in subcontracting.
18–7.203–29 Audit and records.
18–7.203–50 Payment of royalties.
18–7.203–51 Estimated cost and fixed fee.
18–7.203–52 Payment of fixed fee.
18–7.203–53 Interest.
18–7.204 Clauses required to be used when applicable.
18–7.204–1 Clauses for contracts involving construction work.
18–7.204–3 Buy American Act.
18–7.204–4 Notice to the Government of labor disputes.
18–7.204–6 Filing of patent applications.
18–7.204–7 New technology.
18–7.204–9 Rights in data.
18–7.204–12 Security requirements.
18–7.204–15 Priorities, allocations, and allotments.
18–7.204–16 Negotiated overhead rates.
18–7.204–18 Limitation on withholding of payments.
18–7.204–19 Small business subcontracting program.
18–7.204–20 Changes to make-or-buy program.
18–7.204–26 Preference for United States-flag air and ocean services.
18–7.204–28 GSA supply sources.
18–7.204–30 Contractor and subcontractor cost or pricing data.
18–7.204–50 Data requirements.
18–7.204–51 Approval of contract.
18–7.204–53 Limitation of Government's obligation.
18–7.204–55 NASA PERT System.
18–7.204–56 NASA financial management reporting.
18–7.204–57 Implied licenses.
18–7.205 Additional clauses.
18–7.205–1 Alterations in contract.
18–7.205–4 Bill of materials.
18–7.205–5 Federal, State, and local taxes.
18–7.205–50 Notice of delay.
18–7.205–51 Program progress reports.
18–7.205–52 Date of incurrence of costs.
18–7.205–53 Contractor's independent research program.
18–7.205–54 Reports of work.

Subpart 18–7.3—Clauses for Fixed-Price Research and Development Contracts

Sec.
18–7.300 Scope of subpart.
18–7.301 Applicability.
18–7.302 Required clauses.
18–7.302–1 Definitions.
18–7.302–2 Payments.
18–7.302–3 Standards of work.
18–7.302–4 Inspection.
18–7.302–5 Assignment of claims.
18–7.302–6 Examination of records.
18–7.302–7 Federal, State, and local taxes.
18–7.302–8 Utilization of small business concerns.
18–7.302–9 Default.
18–7.302–10 Termination for the convenience of the Government.
18–7.302–11 Disputes.
18–7.302–12 Renegotiation.
18–7.302–13 Buy American Act.
18–7.302–14 Convict labor.
18–7.302–15 Walsh-Healey Public Contracts Act.
18–7.302–16 Work Hours Act of 1962—overtime compensation.
18–7.302–17 Equal opportunity.
18–7.302–18 Officials not to benefit.
18–7.302–19 Covenant against contigent fees.
18–7.302–21 Authorization and consent.
18–7.302–22 Notice and assistance regarding patent and copyright infringement.
18–7.302–23 New technology or property rights in inventions.
18–7.302–24 Rights in data.
18–7.302–25 Security requirements.
18–7.302–26 Utilization of concerns in labor surplus areas.
18–7.302–53 Interest.
18–7.302–54 Reports of work.
18–7.302–55 Implied licenses.
18–7.303 Clauses required to be used when applicable.
18–7.303–1 Clauses for contracts involving construction work.
18–7.303–2 Filing of patent applications.
18–7.303–6 Priorities, allocations, and allotments.
18–7.303–7 Government-furnished property.
18–7.303–8 Soviet-controlled areas.
18–7.303–9 Notice to the Government of labor disputes.
18–7.303–10 Limitation on withholding of payments.
18–7.303–11 Small business subcontracting program.
18–7.303–12 Subcontracts.
18–7.303–13 Changes to make-or-buy program.
18–7.303–14 Payment for overtime and shift premiums.
18–7.303–23 Progress payments.
18–7.303–27 Competition in subcontracting.

Sec.
18–7.303–28 Contractor and subcontractor cost or pricing data.
18–7.303–29 Audit and records.
18–7.303–50 Data requirements.
18–7.303–51 Approval of contract.
18–7.303–52 Preference for United States-flag air and ocean services.
18–7.303–54 Materials reports.
18–7.303–55 NASA PERT System.
18–7.303–56 NASA financial management reporting.
18–7.304 Additional Clauses.
18–7.304–1 Changes.
18–7.304–2 Alterations in contract.
18–7.304–4 Bill of materials.
18–7.304–50 Notice of delay.
18–7.304–51 Program progress reports.
18–7.304–59 Price escalation.
18–7.304–60 Incentive price revision.
18–7.304–61 Special tooling.
18–7.350 Short form clauses for fixed-price research contracts with nonprofit institutions.
18–7.350–1 Definitions.
18–7.350–2 Payment.
18–7.350–3 Technical reports and data.
18–7.350–4 Government-furnished property.
18–7.350–5 Release of information.
18–7.350–6 Security.
18–7.350–7 Property rights in inventions.
18–7.350–8 Disputes.
18–7.350–9 Termination at the option of the Government.
18–7.350–10 Authorization and consent.
18–7.350–11 Notice and assistance regarding patent and copyright infringement.
18–7.350–12 Buy American Act.
18–7.350–13 Examination of records.
18–7.350–14 Equal opportunity.
18–7.350–15 Covenant against contingent fees.
18–7.350–16 Officials not to benefit.
18–7.350–17 Convict labor.
18–7.350–18 Audit and records.
18–7.350–19 Additional clauses.

Subpart 18–7.4—Clauses for Cost-Reimbursement Type Research and Development Contracts

18–7.400 Scope of subpart.
18–7.401 Applicability.
18–7.402 Required clauses for contracts with fee.
18–7.402–1 Definitions.
18–7.402–2 Limitation of cost.
18–7.402–3 Allowable cost, fixed fee and payment.
18–7.402–4 Standards of work.
18–7.402–5 Inspection and correction of defects.
18–7.402–6 Assignment of claims.
18–7.402–7 Records.
18–7.402–8 Subcontracts.
18–7.402–9 Utilization of small business concerns.
18–7.402–10 Termination.
18–7.402–11 Disputes.
18–7.402–12 Renegotiation.
18–7.402–13 Buy American Act.
18–7.402–14 Convict labor.
18–7.402–15 Walsh-Healey Public Contracts Act.
18–7.402–16 Work Hours Act of 1962—overtime compensation.
18–7.402–17 Equal opportunity.
18–7.402–18 Officials not to benefit.
18–7.402–19 Covenant against contingent fees.
18–7.402–20 Authorization and consent.
18–7.402–21 Notice and assistance regarding patent and copyright infringement.
18–7.402–22 New technology.
18–7.402–23 Rights in data.
18–7.402–24 Security requirements.
18–7.402–25 Government property.
18–7.402–26 Insurance—liability to third persons.
18–7.402–27 Utilization of concerns in labor surplus areas.
18–7.402–28 Payment for overtime and shift premiums.
18–7.402–29 Competition in subcontracting.
18–7.402–50 Payment of royalties.
18–7.402–51 Estimated cost and fixed fee.
18–7.402–52 Payment of fixed fee.
18–7.402–53 Interest.
18–7.402–54 Reports of work.
18–7.402–55 Implied licenses.
18–7.403 Clauses required to be used when applicable.
18–7.403–1 Clauses for contracts involving construction work.
18–7.403–2 Filing of patent applications.
18–7.403–5 Excusable delays.
18–7.403–7 Priorities, allocations, and allotments.
18–7.403–8 Soviet-controlled areas.
18–7.403–9 Negotiated overhead rates.
18–7.403–10 Notice to the Government of labor disputes.
18–7.403–11 Contractor and subcontractor cost or pricing data.
18–7.403–12 Limitation on withholding of payments.
18–7.403–13 Small business subcontracting program.
18–7.403–14 Changes to make-or-buy program.
18–7.403–23 GSA supply sources.
18–7.403–50 Data requirements.
18–7.403–51 Approval of contract.
18–7.403–52 Preference for United States-flag air and ocean services.
18–7.403–53 Limitation of Government's obligation.
18–7.403–54 Materials reports.
18–7.403–55 NASA PERT system.
18–7.403–56 Financial management reporting.
18–7.404 Additional clauses.
18–7.404–1 Changes.
18–7.404–2 Alterations in contract.
18–7.404–4 Bills of materials.
18–7.404–50 Notice of delay.
18–7.404–51 Program progress reports.
18–7.404–52 Date of incurrence of costs.
18–7.404–53 Contractor's independent research program.
18–7.404–57 Federal, State, and local taxes.
18–7.450 Clauses for Cost-Reimbursement Research and Development Contracts With Nonprofit Institutions (Including Educational Institutions).
18–7.450–1 Applicability.
18–7.451 Required clauses.
18–7.451–1 Definitions.
18–7.451–2 Limitation of cost.
18–7.451–3 Allowable cost and payment.
18–7.451–4 Standards of work.
18–7.451–5 Inspection.
18–7.451–6 Assignment of claims.
18–7.451–7 Records
18–7.451–8 Subcontracts.
18–7.451–9 Utilization of small business concerns.
18–7.451–10 Termination for the convenience of the Government.
18–7.451–11 Disputes.
18–7.451–12 Renegotiation.
18–7.451–13 Buy American Act.
18–7.451–14 Convict labor.
18–7.451–15 Walsh-Healey Public Contracts Act.
18–7.451–16 Work Hours Act of 1962—overtime compensation.
18–7.451–17 Equal opportunity.
18–7.451–18 Officials not to benefit.
18–7.451–19 Covenant against contingent fees.
18–7.451–20 Authorization and consent.
18–7.451–21 Notice and assistance regarding patent and copyright infringement.
18–7.451–22 New technology or property rights in inventions.
18–7.451–23 Rights in data.
18–7.451–24 Security requirements.
18–7.451–25 Government property.
18–7.451–26 Insurance—liability to third persons.
18–7.451–27 Utilization of concerns in labor surplus areas.
18–7.451–28 Payment for overtime and shift premiums.
18–7.451–29 Competition in subcontracting.
18–7.451–50 Payment of royalties.
18–7.451–51 Estimated cost.
18–7.451–54 Reports of work.
18–7.451–55 Implied licenses.
18–7.452 Clauses required to be used when applicable.
18–7.452–1 Clauses for contracts involving construction work.
18–7.452–2 Filing of patent applications.
18–7.452–7 Priorities, allocations, and allotments.
18–7.452–8 Soviet-controlled areas.
18–7.452–9 Negotiated overhead rates.
18–7.452–10 Notice to the Government of labor disputes.
18–7.452–11 Contractor and subcontractor cost of pricing data.
18–7.452–12 Limitation on withholding of payments.
18–7.452–13 Small business subcontracting program.
18–7.452–14 Changes to make-or-buy program.
18–7.452–23 GSA supply sources.
18–7.452–50 Data requirements.
18–7.452–51 Approval of contract.
18–7.452–52 Preference for United States-flag air and ocean services.
18–7.452–53 Limitation of Government's obligation.
18–7.452–54 Materials reports.
18–7.452–55 NASA PERT System.
18–7.452–56 NASA financial management reporting.
18–7.453 Additional clauses.
18–7.453–1 Changes.
18–7.453–2 Alterations on contract.
18–7.453–4 Bill of materials.
18–7.453–50 Notice of delay.
18–7.453–51 Program progress reports.
18–7.453–52 Date of incurrence of costs.
18–7.453–53 Contractor's independent research program.
18–7.453–57 Federal, State, and local taxes.
18–7.453–58 Excusable delays.
18–7.460 Short Form Clauses for Cost-Reimbursement Type Research Contract With Nonprofit Institutions (Including Educational Institutions).
18–7.460–1 Definitions.
18–7.460–2 Limitation of cost—allowable cost and payment.
18–7.460–3 Government property.
18–7.460–4 Subcontracts.
18–7.460–5 Insurance—liability to third persons.
18–7.460–6 Records.
18–7.460–7 Release of information.
18–7.460–8 Property rights in inventions.
18–7.460–9 Data and inspection.
18–7.460–10 Authorization and consent.
18–7.460–11 Notice and assistance regarding patent and copyright infringement.
18–7.460–12 Security.
18–7.460–13 Disputes.
18–7.460–14 Termination.
18–7.460–15 Buy American Act.
18–7.460–16 Equal opportunity.

Sec.
18-7.460-17 Covenant against contingent fees.
18-7.460-18 Officials not to benefit.
18-7.460-19 Convict labor.
18-7.461 Additional clauses.

Subpart 18-7.7—Clauses for Facilities Contracts

18-7.701 Applicability.
18-7.702 Required clauses for facilities acquisition contracts.
18-7.702-1 Definitions.
18-7.702-2 Representations and warranties.
18-7.702-3 Inspection.
18-7.702-4 Government bills of lading.
18-7.702-5 Limitation of cost.
18-7.702-6 Records.
18-7.702-7 Title.
18-7.702-8 Access.
18-7.702-9 Liability for the facilities.
18-7.702-10 Indemnification of the Government.
18-7.702-11 Failure to perform.
18-7.702-12 Disputes.
18-7.702-13 Security requirements.
18-7.702-14 Assignment of claims.
18-7.702-15 Officials not to benefit.
18-7.702-16 Covenant against contingent fees.
18-7.702-17 Payment for overtime and shift premiums.
18-7.702-18 Convict labor.
18-7.702-19 Equal opportunity.
18-7.702-20 Work Hours Act of 1962—overtime compensation.
18-7.702-21 Interest.
18-7.702-22 Supersedure.
18-7.702-23 Competition in subcontracting.
18-7.702-24 Facilities to be provided.
18-7.702-25 Late delivery, diversion, and substitution.
18-7.702-26 Changes.
18-7.702-27 Excusable delays.
18-7.702-28 Allowable cost and payment.
18-7.702-29 Insurance—liability to third persons.
18-7.702-30 Stop work orders.
18-7.702-31 Termination of work.
18-7.702-32 Authorization and consent.
18-7.702-33 Notice and assistance regarding patent and copyright infringement.
18-7.702-34 License for subsequent use.
18-7.702-35 Subcontracts.
18-7.702-36 Small business subcontracting program.
18-7.702-37 Utilization of concerns in labor surplus areas.
18-7.702-38 Buy American Act.
18-7.702-39 Renegotiation.
18-7.702-40 Notice to the Government of labor disputes.
18-7.702-41 Walsh-Healey Public Contracts Act.
18-7.702-42 GSA supply sources.
18-7.702-43 Limitation on withholding of payments.
18-7.702-44 Utilization of small business concerns.
18-7.702-45 Payment of royalties.
18-7.703 Required clauses for facilities use contracts.
18-7.703-1 Definitions.
18-7.703-2 Representations and warranties.
18-7.703-3 Inspection.
18-7.703-4 Government bills of lading.
18-7.703-5 Limitation of cost.
18-7.703-6 Records.
18-7.703-7 Title.
18-7.703-8 Access.
18-7.703-9 Liability for the facilities.
18-7.703-10 Indemnification of the Government.
18-7.703-11 Failure to perform.
18-7.703-12 Disputes.
18-7.703-13 Security requirements.
18-7.703-14 Assignment of claims.
18-7.703-15 Officials not to benefit.
18-7.703-16 Covenant against contingent fees.
18-7.703-17 Payment for overtime and shift premiums.
18-7.703-18 Convict labor.
18-7.703-19 Equal opportunity.
18-7.703-20 Work Hours Act of 1962—overtime compensation.
18-7.703-21 Interest.
18-7.703-22 Supersedure.
18-7.703-23 Competition in subcontracting.
18-7.703-24 Use and charges.
18-7.703-25 Costs and payment.
18-7.703-26 Location of the facilities.
18-7.703-27 Maintenance.
18-7.703-28 Property control.
18-7.703-29 Notice of use of the facilities.
18-7.703-30 Period of this contract.
18-7.703-31 Termination of the use of the facilities.
18-7.703-32 Disposition of the facilities.
18-7.703-33 Property reporting.
18-7.704 Required clauses for consolidated facilities contracts.
18-7.704-1 Definitions.
18-7.704-2 Representations and warranties.
18-7.704-3 Inspection.
18-7.704-4 Government bills of lading.
18-7.704-5 Limitation of cost.
18-7.704-6 Records.
18-7.704-7 Title.
18-7.704-8 Access.
18-7.704-9 Liability for the facilities.
18-7.704-10 Indemnification of the Government.
18-7.704-11 Failure to perform.
18-7.704-12 Disputes.
18-7.704-13 Security requirements.
18-7.704-14 Assignment of claims.
18-7.704-15 Officials not to benefit.
18-7.704-16 Covenant against contingent fees.
18-7.704-17 Payment for overtime and shift premiums.
18-7.704-18 Convict labor.
18-7.704-19 Equal opportunity.
18-7.704-20 Work Hours Act of 1962—overtime compensation.
18-7.704-21 Interest.
18-7.704-22 Supersedure.
18-7.704-23 Competition in subcontracting.
18-7.704-24 Facilities to be provided.
18-7.704-25 Late delivery, diversion, and substitution.
18-7.704-26 Changes.
18-7.704-27 Excusable delays.
18-7.704-28 Allowable cost and payment.
18-7.704-29 Insurance—liability to third persons.
18-7.704-30 Stop work orders.
18-7.704-31 Termination of work.
18-7.704-32 Authorization and consent.
18-7.704-33 Notice and assistance regarding patent and copyright infringement.
18-7.704-34 License for subsequent use.
18-7.704-35 Subcontracts.
18-7.704-36 Small business subcontracting program.
18-7.704-37 Utilization of concerns in labor surplus areas.
18-7.704-38 Buy American Act.
18-7.704-39 Renegotiation.
18-7.704-40 Notice to the Government of labor disputes.
18-7.704-41 Walsh-Healey Public Contracts Act.
18-7.704-42 GSA supply sources.
18-7.704-43 Limitation on withholding of payments.
18-7.704-44 Utilization of small business concerns.
18-7.704-45 Payment of royalties.
18-7.704-46 Use and charges.
18-7.704-47 Location of the facilities.
18-7.704-48 Maintenance.
18-7.704-49 Property control.
18-7.704-50 Notice of use of the facilities.
18-7.704-51 Termination of use of the facilities.
18-7.704-52 Period of this contract.
18-7.704-53 Disposition of the facilities.
18-7.704-54 Property reporting.
18-7.705 Clauses required to be used when applicable.
18-7.705-1 Rights in data.
18-7.705-2 Filing of patent applications.
18-7.705-3 Priorities, allocations, and allotments.
18-7.705-4 Contractor and subcontractor cost and pricing data.
18-7.705-5 Labor standards for construction work.
18-7.705-6 Improvements to buildings or land owned by the Government.
18-7.705-7 New technology or property rights in inventions.
18-7.705-8 Implied licenses.
18-7.705-9 Changes to make-or-buy program.

Subpart 18-7.50—Clauses for Negotiated Utility Service Contracts

18-7.5000 Scope of subpart.
18-7.5001 Required clauses—contracts for more than $2,500.
18-7.5001-1 Definitions.
18-7.5001-2 Payments.
18-7.5001-3 Assignment of claims.
18-7.5001-4 Disputes.
18-7.5001-5 Equal opportunity.
18-7.5001-6 Officials not to benefit.
18-7.5001-7 Covenant against contingent fees.
18-7.5001-8 Termination.
18-7.5001-9 Convict labor.
18-7.5001-10 Rates.
18-7.5001-11 Public regulation and change of rates.
18-7.5001-12 Change in class of service.
18-7.5001-13 Contractor's facilities.
18-7.5001-14 Technical provisions.
18-7.5002 Clauses required to be used when applicable.
18-7.5002-1 Federal, State, and local taxes.
18-7.5002-2 Work Hours Act of 1962—overtime compensation.
18-7.5002-3 Examination of records.
18-7.5002-4 Approval of contract.
18-7.5003 Additional clauses.
18-7.5003-1 Renewal of contract.
18-7.5003-2 Public regulation and change of rates.
18-7.5003-3 Connection charge.
18-7.5003-4 Termination charge.
18-7.5003-5 Multiple service locations.
18-7.5004 Required clauses—contracts for $2,500 or less annually.
18-7.5004-1 Definitions.
18-7.5004-2 Payments.
18-7.5004-3 Assignment of claims.
18-7.5004-4 Disputes.
18-7.5004-5 Equal opportunity.
18-7.5004-6 Officials not to benefit.
18-7.5004-7 Covenant against contingent fees.
18-7.5004-8 Termination.
18-7.5004-9 Convict labor.
18-7.5004-10 Rates.
18-7.5004-11 Public regulation and change of rates.
18-7.5004-12 Contractor's facilities.

AUTHORITY: The provisions of this Part 18-7 issued under 42 U.S.C. 2473(b)(1).

§ 18–7.000 Scope of part.

This part sets forth uniform clauses to be used in contracts for property and services entered into by NASA, except in contracts to be performed outside the United States, its possessions, and Puerto Rico (hereafter referred to as foreign contracts). The clauses to be used in foreign contracts shall be as prescribed on a case-by-case basis in accordance with the provisions of Subpart 18–6.7.

Subpart 18–7.1—Clauses for Fixed-Price Supplys Contract

§ 18–7.100 Scope of subpart.

This subpart sets forth uniform clauses for use in fixed-price supply contracts as defined in § 18–7.102.

§ 18–7.102 Applicability.

As used throughout this subpart, the term "fixed-price supply contract" means any contract entered into either by formal advertising or by negotiation, including letter contracts (except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement), at a fixed price (with or without provision for price redetermination, escalation, or other form of price revision), and for supplies other than construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property; experimental, developmental, or research work, or facilities to be provided by the Government under a facilities contract as defined in § 18–13.101–17.

§ 18–7.103 Required clauses.

The following clauses shall be inserted in all fixed-price supply contracts.

§ 18–7.103–1 Definitions.

DEFINITIONS (SEPTEMBER 1962)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(d) The term "NASA" means the National Aeronautics and Space Administration.

Additional definitions may be included, provided they are not inconsistent with the foregoing clause or the provisions of this chapter.

§ 18–7.103–2 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date or receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause the period of "30 days" within which any claim for adjustment must be asserted may be varied not to exceed "60 days."

§ 18–7.103–3 Extras.

EXTRAS (SEPTEMBER 1962)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

§ 18–7.103–4 Variation in quantity.

VARIATION IN QUANTITY (SEPTEMBER 1962)

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

§ 18–7.103–5 Inspection.

INSPECTION (SEPTEMBER 1962)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract, *provided,* that in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

§ 18–7.103–6 Responsibility for supplies.

RESPONSIBILITY FOR SUPPLIES (SEPTEMBER 1962)

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to

THE UNIVERSITY OF MICHIGAN

the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

§ 18–7.103–7 Payments.

Insert the following clause except that in letter contracts insert clause 4 of NASA Form 551–3 set forth in § 18–16.859–4(d).

PAYMENTS (SEPTEMBER 1962)

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

In contracts for the furnishing of transportation and accessorial services, the words "properly certified" shall be substituted for the word "proper" in the clause set forth in this section.

§ 18–7.103–8 Assignment of claims.

ASSIGNMENT OF CLAIMS (SEPTEMBER 1962)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

In negotiated procurement, where a contractor is indebted to the Government as a result of dealings with NASA or other Government agencies, the last sentence before the sentence in parentheses of paragraph (a) of the "Assignment of Claims" clause, which is commonly referred to as the "no-set-off" provision, shall be omitted if such action is requested by other Government agencies or if it otherwise appears to be appropriate to protect the interests of the Government.

§ 18–7.103–9 Additional bond security.

ADDITIONAL BOND SECURITY (SEPTEMBER 1962)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

§ 18–7.103–10 Federal, State, and local taxes.

Insert the appropriate clause set forth in § 18–11.401–1 or § 18–11.401–2(b) of this chapter.

§ 18–7.103–11 Default.

In accordance with the requirements of § 18–8.707, insert the clause set forth therein.

§ 18–7.103–12 Disputes

DISPUTES (SEPTEMBER 1962)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator. The decision of the Administrator or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Contracting Officer.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above, *provided*, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

§ 18–7.103–13 Renegotiation.

RENEGOTIATION (SEPTEMBER 1962)

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, *et seq.*), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

§ 18–7.103–15 Soviet-controlled areas.

In accordance with the requirements of §18–6.403, insert the clause set forth therein and include, in the Schedule of the contract, the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.103–16 Work Hours Act of 1962—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the prefatory language required by § 18–12.303–2 for use in contracts with a State or political subdivision thereof.

§ 18–7.103–17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.103–18 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–12.802–2.

§ 18–7.103–19 Officials not to benefit.

OFFICIALS NOT TO BENEFIT (SEPTEMBER 1962)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 18–7.103–20 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.103–21 Termination for convenience of the Government.

Insert the clause set forth in § 18–8.701.

§ 18–7.103–22 Authorization and consent.

Insert the clause set forth in § 18–9.103(a).

§ 18–7.103–23 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.103–53 Interest.

INTEREST (JANUARY 1963)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of six percent per annum from the date due until paid. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first demand for payment, (iii) the date of a supplemental agreement fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

§ 18–7.103–54 Order of precedence.

ORDER OF PRECEDENCE (SEPTEMBER 1962)

To the extent of any inconsistency between any of the following, which are listed in the order of their precedence, the item of higher precedence governs, unless otherwise specified:

(a) The Schedule;
(b) The Terms and Conditions of the Invitation for Bids;
(c) The Additional General Provisions;
(d) The General Provisions;
(e) The Specifications; and
(f) The Drawings.

§ 18–7.104 Clauses required to be used when applicable.

§ 18–7.104–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in fixed-price supply contracts which involve construction work the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act
Work Hours Act of 1962—Overtime Compensation
Apprentices
Payroll Records and Payrolls
Copeland ("Anti-Kickback") Act—Nonrebate of Wages
Subcontracts—Termination
Withholding of Funds to Assure Wage Payment

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.104–3 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.104–4 Notice to the Government of labor disputes.

Wherever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (SEPTEMBER 1962)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

§ 18–7.104–5 Patent indemnity.

Under the circumstances specified in § 18–9.104, the clause set forth therein may be included in the contract.

§ 18–7.104–6 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.104–7 New technology.

In accordance with the requirements of § 18–9.101–2, insert the clause set forth in § 18–9.101–2(c).

§ 18–7.104–9 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause set forth in § 18–9.203–2 and, if applicable, paragraph (j) from § 18–9.203–3.

§ 18–7.104–12 Security requirements.

Insert the following clause in all contracts which are classified "Confidential" or higher and in other contracts which may require access to classified information or material:

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Checklist (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractors' facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of:

(i) The Security Agreement (DD Form 441), including the Industrial Security Manual for Safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department assigned security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any such equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.104–14 Utilization of small business concerns.

In accordance with the instructions in § 18–1.707–3(a), insert the clause contained therein.

§ 18–7.104–15 Examination of records.

Insert the following clause in all negotiated fixed-price supply contracts in excess of $2,500.

EXAMINATION OF RECORDS (SEPTEMBER 1962)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase

THE UNIVERSITY OF MICHIGAN

orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

§ 18–7.104–17 Convict labor.

In accordance with the requirements in Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.104–18 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.104–20 Utilization of concerns in labor surplus areas.

Insert the "Utilization of Concerns in Labor Surplus Areas" clause set forth in this section in all contracts in amounts which may exceed $5,000, except in:

(a) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(b) Contracts for services which are personal in nature; and

(c) Contracts for construction.

UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (SEPTEMBER 1962)

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; (v) small business concerns which are not labor surplus area concerns.

§ 18–7.104–21 Limitation on withholding of payments.

(a) Except as provided in paragraph (b) of this section, insert the following clause in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (SEPTEMBER 1962)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time: *Provided*, That this limitation shall not apply to—

(i) withholdings pursuant to any clause relating to wages or hours of employees;

(ii) withholdings not specifically provided for by this contract; and

(iii) the recovery of overpayments.

(b) The clause set forth in paragraph (a) of this section is not required in letter contracts or where:

(1) The contracting officer determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(2) All of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (i) are exempt from the limitations in the clause set forth in paragraph (a) of this section under the proviso thereof, or (ii) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them are being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in paragraph (a) of this section is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

§ 18–7.104–22 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.104–23 Subcontracts.

(a) The clause set forth below shall be included in contracts which include a price redetermination or incentive provision.

SUBCONTRACTS (SEPTEMBER 1962)

(a) The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total amount of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total amount of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time and material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approved in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitue a determination of the acceptability of the subcontract price, unless such approval specifically provides that it constitutes a determination of the acceptability of the subcontract price.

(e) The Contracting Officer may approve all or any part of the contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

(b) If the contract does not include a price redetermination or incentive provision, the clause set forth below may be included in the contract:

SUBCONTRACTS (SEPTEMBER 1962)

No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for without the written approval of the Contracting Officer as to sources.

§ 18–7.104–24 Government - furnished property.

In accordance with the requirements of § 18–13.502, insert the appropriate clause set forth therein.

§ 18–7.104–25 Special tooling.

In accordance with the requirements of § 18–13.504, insert the clause therein.

§ 18–7.104–26 Changes to make-or-buy program.

In accordance with the requirements of Subpart 18–3.9, insert the clause set forth in § 18–3.902(a).

§ 18–7.104–27 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h)(2).

§ 18–7.104–35 Progress payments.

The policies and procedures set forth in 32 CFR 163.73 concerning the use of progress payments in formally advertised procurements shall be followed by NASA procurement offices. The provisions to be included in the invitation for bids and the "Progress Payments" clauses authorized for use pursuant to 32 CFR 163.73 are authorized for use in accordance with the instructions contained therein, except that the short form "Progress Payments" clauses set forth in paragraphs (a) and (b) of this section may be used in lieu of the ASPR clauses whenever it is estimated that the procurement will be less than $100,000.

(a) *Progress payments labor and material clause (short form).*

PROGRESS PAYMENTS (SHORT FORM CLAUSE BASED ON BOTH DIRECT LABOR AND MATERIAL COSTS OR WHEN LIMITED TO EITHER LABOR OR MATERIAL) (SEPTEMBER 1962)

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer, upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be 85 percent of the Contractor's cumulative costs of direct labor performed and material acquired [strike out inapplicable language if limited to a single direct cost] for performance of this contract; less the sum of previous progress payments. In no event, however, may the amount of unliquidated progress pay-

ments exceed ---- percent of the total contract price of items and services not yet delivered, invoiced to and accepted by the Government; also, the aggregate amount of progress payments made may not exceed ---- percent of the total contract price. [These percentages shall be the same as in (b) below.]

(2) Contractor's costs above mentioned must be reasonable, allocable to this contract, and consistent with generally accepted accounting principles.

(b) *Recovery of Progress Payments.* Except as otherwise provided in this contract, payment by the Government for materials delivered, invoiced to, and accepted by the Government shall be reduced by ---- percent and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been liquidated. [The percentage to be inserted here and in (a)(1) above should be calculated as those in the following example: If the base for progress payments is 85 percent of the cost of direct labor and material and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation would be at a rate not less than 59.5 percent (85 x 70) of the contract price or delivered items.]

(c) *Reduction or Suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to Material and Work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting practices shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and Reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the Default clause.

(g) *Reservation of Rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(b) *Progress payments total costs clause (short form).*

PROGRESS PAYMENTS (SHORT FORM "TOTAL COSTS" CLAUSE) (SEPTEMBER 1962)

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be 70 percent of the Contractor's cumulative total costs under this contract, less the sum of any previous progress payments. In no event, however, may the aggregate amount of progress payments made exceed 70 percent of the total contract price.

(2) The Contractor's costs must be reasonable, allocable to this contract, consistent with sound and generally accepted accounting principles, and may include depreciation or amortization allowance. Such costs shall exclude amounts for materials to which the Contractor has not acquired title.

(3) At no time shall unliquidated progress payments exceed 70 percent of the total contract price of the items and services not yet delivered and invoiced to and accepted by the Government.

(b) *Recovery of Progress Payments.* Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced, and accepted shall be reduced by 70 percent of the contract price of such items and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been recovered.

(c) *Reduction or Suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to Material and Work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting principles shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property and work not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and Reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the default clause.

(g) *Reservation of Rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 18–7.104–36 Preference for United States-flag air and ocean services.

Under the circumstances stated in Subpart 18–1.14, insert the clause set forth in § 18–1.1403 in the contract.

§ 18–7.104–40 Competition in subcontracting.

Insert the following clause in all negotiated contracts over $10,000, except in firm fixed-price contracts where award is on the basis of effective price competition, or where prices are established by law or regulation.

COMPETITION IN SUBCONTRACTING (SEPTEMBER 1962)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

§ 18–7.104–41 Contractor and subcontractor cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.104–42 Audit and records.

Insert the following clause in all fixed-price incentive contracts and fixed-price contracts providing for price redetermination.

AUDIT AND RECORDS (AUGUST 1964)

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's plants, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representative.

(c) The Contractor shall preserve and make available his records (i) until the expiration of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract or (ii) litigation or the settlement of claims arising out of the performance of this contract, shall be retained until such appeals, litigation, or claims have been disposed of.

(d) The Contractor shall insert the substance of this clause in each subcontract hereunder that is not on a firm fixed-price basis.

§ 18–7.104–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.104–51 Approval of contract.

Insert the following clause in the contract when approval thereof by the Director of Procurement is required.

APPROVAL OF CONTRACT (SEPTEMBER 1962)

This contract shall be subject to the written approval of the Director of Procurement, NASA Headquarters, or his duly authorized representative, and shall not be binding until so approved.

§ 18–7.104–57 Implied licenses.

In accordance with the requirements of § 18–9.110, insert the clause set forth therein.

§18–7.105 Additional clauses.

The clauses set forth in this § 18–7.105 shall be inserted in fixed-price supply contracts if it is desired to cover the subject matter thereof.

§ 18–7.105–1 Alterations in contract.

Alterations in contract provisions may be made only in accordance with the provisions of § 18–1.109. When alterations are necessary, they shall be set forth either in the Schedule or on an attachment sheet, preceded by the following clause:

ALTERATIONS IN CONTRACT (SEPTEMBER 1962)

The following alterations have been made in the provisions of this contract.

§ 18–7.105–5 Liquidated damages.

When a liquidated damages provision is to be included in the contract, the following clause shall be inserted as paragraph (f) of the "Default" clause (see § 18–8.707) and the present paragraph (f) of that clause redesignated "(g)." In addition, an appropriate implementing provision setting forth the amount of liquidated damages shall be included in the Schedule.

(f) (i) In the event the Government exercises its right of termination as provided in paragraph (a) above, the Contractor shall be liable to the Government for excess costs as provided in paragraph (b) above and, in addition, for liquidated damages, in the amount set forth elsewhere in this contract, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Government may reasonably obtain delivery or performance of similar supplies or services.

(ii) If the contract is not so terminated, notwithstanding delay as provided in paragraph (a) above, the Contractor shall continue performance and be liable to the Government for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

(iii) The Contractor shall not be liable for liquidated damages for delays due to causes which would relieve him from liability for excess costs as provided in paragraph (c) of this clause. (September 1962)

§ 18–7.105–6 Bill of materials.

A bill of materials consist of a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind. A bill of materials, with respect to all or part of the supplies to be furnished pursuant to a contract, will be required only if the contracting officer determines that such bill is necessary to develop materials or components requirements for production and maintenance programs, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the bill of materials;

(b) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and

(e) Delivery dates.

In such event, the contract shall also include the following clause:

BILL OF MATERIALS (SEPTEMBER 1962)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346 and 347, if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes," in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

Where a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the bill of materials shall be furnished on DD Forms 346 and 347, if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

§ 18–7.105–55 Warranty.

The clauses set forth in this section are authorized for use when, in the discretion of the contracting officer, the benefits of warranties normally granted to a contractor's commercial customers should be obtained by the Government. Use of either clause (a) or clause (b), as appropriate, is authorized.

WARRANTY (SEPTEMBER 1962)

(a) Notwithstanding the provisions of the "Inspection" clause of this contract, the Contractor agrees that the articles delivered under this contract shall be covered by the same warranties as the Contractor customarily offers in connection with the sale of these articles on the commercial market. In the event that differing warranties covering these articles are customarily offered to other purchasers by the Contractor, it is agreed that such warranties shall apply to this contract as are available to the Contractor's most favored purchaser.

WARRANTY (SEPTEMBER 1962)

(b) Notwithstanding the provisions of the "Inspection" clause of this contract, the Contractor agrees that the articles delivered under this contract shall be covered by the same warranties as the Contractor customarily offers in connection with the sale of these articles on the commercial market. In the event that differing warranties covering these articles are customarily offered to other purchasers by the Contractor, it is agreed that such warranties shall apply to this contract as are available to the Contractor's most favored purchaser. In addition to any other obligations imposed upon the Contractor under any such warranties, and regardless of whether a similar right is customarily offered to other purchasers, the Contractor shall, if so required by the Government within a reasonable time after the giving of notice of defect in accordance with such warranties, correct or replace the defective or nonconforming article with all possible speed at the Contractor's cost, including shipping costs, not exceeding usual charges, from the delivery point to the Contractor's plant and return.

§ 18–7.105–56 Guaranty.

The clause set forth in this section is authorized for use when, in the discretion of the contracting officer, the need for such a guaranty is felt to outweigh the price increase, if any, which the inclusion of such a clause might entail. The period of time within which notice of defect must be given may be varied.

GUARANTY (SEPTEMBER 1962)

Notwithstanding the provisions of the "Inspection" clause of this contract, the Contractor guarantees that at the time of delivery thereof the articles provided for under this contract will be free from any defects in material or workmanship and will conform to the requirements of this contract. Notice of any such defect or nonconformance shall be given by the Government to the Contractor within one (1) year of the delivery of the defective or nonconforming article. If required by the Government within a reasonable time after such notice, the Contractor shall with all possible speed correct or replace the defective or nonconforming article or part thereof. When such correction or replacement requires transportation of the article or part thereof, shipping costs, not exceeding usual charges, from the delivery point to the Contractor's plant and return, shall be borne by the Contractor; the Government shall bear all other shipping costs. This guaranty shall then continue as to corrected or replacing articles or if only parts of such articles are corrected or replaced, to such corrected or replacing parts, until one (1) year after date of redelivery. If the Government does not require correction or replacement of a defective or nonconforming article, the Contractor, if required by the Contracting Officer within a reasonable time after the notice of defect or nonconformance, shall repay such portion of the contract price of the article as is equitable in the circumstances.

§ 18–7.106 Price escalation clauses (established prices).

This § 18–7.106 sets forth uniform clauses for use when it is desired to provide for price escalation in the event of changes in the contractor's established prices. Each clause is preceded by a statement of the conditions under which it may be used.

§ 18–7.106–1 Escalation clause for basic steel, aluminum, brass, bronze, or copper mill products.

The "Price Escalation" clause set forth in this § 18–7.106–1 is authorized for use in advertised or negotiated fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates and bars, when an established price exists for the particular supply being procured. The percentage figure to be used in paragraph (d)(3) of this clause shall not exceed 10 percent.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging and packing, beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising) for like quantities of the supplies covered by this contract.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any established price, and each applicable unit price shall be decreased by the amount of the decrease in the applicable established price. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by formal advertising), or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions.

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased by an amount greater than the amount of the increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, but if the Contractor's request for adjustment is received by the Contracting Officer more than ten (10) days after the effective date of the increase in the Contractor's applicable rate, no adjusted unit price shall be effective earlier than the date of receipt by the Contracting Officer of such request.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation. In such event the Government shall pay for all supplies so delivered at the applicable unit price contained in the Contractor's request, and the contract shall be amended accordingly: *Provided*, That such certification is made within 10 days after receipt of notice of such cancellation, *And provided further*, That such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (d). In the event this contract is for standard steel supplies, they shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested: *Provided*, That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), *And provided further*, That if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested: *Provided*, That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 18–7.106–2 Escalation clause for nonstandard steel items.

The "Price Escalation" clause set forth in this § 18–7.106–2 is authorized for use in advertised or in negotiated fixed-price supply contracts when:

(a) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(b) The items being procured are nonstandard steel items made wholly or in major part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) of the clause is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors, as appropriate, to complete all blanks in accordance with the applicable notes.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (i) the Contractor's rates of pay for labor employed by it, or (ii) the prices which the Contractor charges his manufacturing shops for the steel required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be ____ percent. [See Note (1).]

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's plant [see Note (2)] for any particular month. The word "month" as used herein means "calendar month": *Provided, however*, That if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of _____, 19--, [see Note (3)] the month immediately preceding, and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of the contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established or published price to the public [see Note (8)] including all applicable extras of $_____ per _____ [see Note (4)] for _____ [see Note (5)] on _____, 19-- [see Note (6)] and the "current steel index," which shall be the Contractor's established or published price to the public [see Note (8)] of said item including all applicable extras in effect -- days [see Note (7)] prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (i) the amount (representing the adjusted cost of labor) obtained by multiplying ____ percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (ii) the amount (representing the adjusted cost of steel) obtained by multiplying ____ percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (iii) the amount equal to ____ percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision) [see Note (1)]: *Provided, however,* That any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty (30) days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (i) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index," and (ii) the Contractor's established or published prices to the public [see Note (8)] including all applicable extras, for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer or his duly authorized representative, the Contractor shall make available his records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be amended accordingly.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and materials indices under paragraphs (c) and (d) hereof: *Provided, however,* That as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered: *Provided, however,* That in case the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

(i) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

NOTES

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e) (i) and (ii). In paragraph (e) (iii), bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit of measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no established or published price to the public, or when it is not desirable to use such price this paragraph may refer to another appropriate price basis, such as an established interplant price.

§ 18–7.106–3 Escalation clause for standard supplies.

The "Price Escalation" clause set forth in this § 18–7.106–3 is authorized for use in negotiated fixed-price supply contracts for standard supplies for which established prices exist. This clause may be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. The percentage figure to be used in paragraph (d) (3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against his list or catalog price are taken into account in negotiating the contract unit price, the contracing officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging, and packing beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the contract date for like quantities of the supplies covered by this contract. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date; or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the

event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested: *Provided,* That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), *And provided further,* That if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested: *Provided,* That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 18–7.106–4 Escalation clause for semistandard supplies.

The "Price Escalation" clause set forth in this § 18–7.106–4 is authorized for use in negotiated fixed-price supply contracts for semistandard supplies, the prices of which can be reasonably related to the prices of nearly equivalent standard supplies for which established prices exist. This clause may be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. A clear understanding should be set forth in writing prior to making the contract as to the identity of the standard supply items which are applicable. The percentage figure to be used in paragraph (d)(3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against his list or catalog price are taken into account in negotiating the contract unit price, the contracting officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts. When the supplies being purchased are standard supplies in all respects except for preservation, packaging, and packing requirements, the following clause should not be used; in such cases the escalation clause for standard supplies in § 18–7.106–3 is the appropriate clause.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the supplies covered by this contract are supplies which the Contractor customarily offers for sale commercially except for modifications in accordance with the specifications of this contract, and that as of the contract date any differences between the unit prices stated herein and the Contractor's established prices for like quantities of the supplies which are the nearest commercial equivalents of the supplies covered by this contract (herein referred to as "the established prices") are due to compliance with such specifications, and to compliance with any requirements which this contract may contain for preservation, packaging, and packing beyond standard commercial practice. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date, or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, pursuant to the clause of the contract entitled "Termination for Convenience of the Government," terminate the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such termination.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or termination of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested: *Provided,* That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), *And provided further,* That if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor terminates the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested: *Provided,* That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 18–7.107 Price escalation clause (labor and material).

(a) The "Price Escalation" clause set forth in this § 18–7.107 is authorized for use in negotiated fixed-price supply contracts where (1) the price exceeds $50,000, (2) the period of performance exceeds six months, (3) there is no major element of design engineering or developmental work involved in producing the items being procured, and (4) one or more identifiable labor or material cost factors are subject to change.

(b) The Schedule shall describe in detail the types of labor and materials subject to escalation, the labor rates (including fringe benefits, if any), and unit prices of materials, which may be increased or decreased, and the quantities of labor and specified materials allocable to each unit of supplies to be delivered under the contract. The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price escalation pursuant to clause—of this contract.

CONTRACT ITEM NO. 1

Types of labor and materials	Rates of pay and material prices	Quantities and direct costs per unit of procurement
Drill press operator.	$3.00/hour—no fringe benefits included.	20 min—$1.00.
Welder	$2.75/hour. 0.05/hour—vacation pay. 0.20/hour—pension plan.	
Copper sheet	$3.00 $0.40 lb	10 min—$0.50. 2 lb.—$0.80.
Purchased parts:		
(1) ABC tube X5721.	$1.00 each	3 ea.—$3.00.
(2) XYZ part No. 9348.	$0.50 each	10 ea.—$5.00.

The percentage figure to be used in subparagraph (d)(vi) of the clause will not exceed 10 percent.

(c) In negotiating adjustments under the clause, the contracting officer will consider work in process and materials on hand at the time of changes in labor rates or materials prices since these elements may have a significant impact on equitable price adjustments.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs of performance resulting from increases in (i) the Contractor's rates of pay for labor or (ii) the unit prices for materials, set forth in the Schedule.

(b) If at any time during the performance of this contract there is an increase or decrease in the rates of pay for labor or unit prices for materials set forth in the Schedule, the Contractor shall notify the Contracting Officer thereof within 60 days of such increase or decrease or within such further period as may be approved in writing by the Contracting Officer, but in any event not later than final payment under the contract. Such notice shall include the Contractor's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph (c) below and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount, both of the increase or decrease and of the Contractor's proposal for an equitable adjustment.

(c) Promptly upon receipt of any notice and date described in (b) above, the Contractor and the Contracting Officer shall negotiate an equitable adjustment, and the effective date thereof, in the contract unit prices to reflect any change in the cost of performance of this contract due to the increase or decrease in rates of pay for labor or unit prices for materials set forth in the Schedule: *Provided, however,* That such negotiations may be postponed by the Contracting Officer until an accumulation of such increases and decreases results in an adjustment allowable under (d)(v). The equitable adjustment, and the effective date thereof, shall be set forth in an amendment or supplemental agreement to this contract. Such amendment or supplemental agreement shall also revise the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increase or decrease therein. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding any other provision of this clause, any price adjustment under this clause shall be subject to the following limitations:

(i) There shall be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(ii) There shall be no adjustment other than for increases or decreases in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(iii) There shall be no adjustment for any increase or decrease in the quantities of labor or materials set forth in the Schedule for each item to be delivered hereunder;

(iv) No upward adjustment shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the adjustment, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule;

(v) Except as provided in (e) below, there shall be no adjustment for any change in rates of pay for labor or unit prices for materials which would not result in a net change of at least three percent of the then current total contract price; and

(vi) There shall be no adjustment upward which would cause any adjusted contract unit price to exceed ____ percent of the corresponding original contract unit price.

(e) If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to (c) above, the limitations of (d)(v) shall not apply.

(f) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that he has given notice of all such decreases in compliance with (b) above.

(g) The Contracting Officer may examine the contractor's books, records, and other supporting data relevant to the costs of labor and materials during all reasonable times until three years after final payment under this contract.

§ 18–7.108 Incentive price revision clause.

When, in accordance with the provisions of Subpart 18–3.4, the fixed-price incentive contract described in 32 CFR 3.404(a)(2) is to be used, the clause set forth in this § 18–7.108 shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, and target price. Paragraph (d)(2) of the following clause may be modified to provide, within the price ceiling, for a ceiling, a floor, or both on the final profit.

INCENTIVE PRICE REVISION (SEPTEMBER 1962)

(a) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with this clause, and is composed of "target cost" and "target profit."

(ii) The term "target cost" means that part of the target price which, at the time of its negotiation, was agreed to as the estimate of the unit cost of the supplies or services being procured.

(iii) The term "target profit" means that part of the target price which, at the time of its negotiation, was agreed to as the unit profit for furnishing the supplies or services at a cost equal to the target cost.

(iv) The term "total target price" means the sum of the target prices.

(v) The term "total target cost" means the sum of the target costs.

(vi) The term "total target profit" means the sum of the target profits.

(vii) The term "total adjusted cost" means the final negotiated cost of all supplies or services which are subject to price revision under this clause.

(viii) The term "total adjusted price" means the final contract price, as computed in accordance with this clause, for all supplies or services which are subject to price revision under this clause.

(b) *General.* The supplies or services identified in the Schedule as Items _____ are subject to price revision in accordance with the provisions of this clause: *Provided,* That in no event shall the total adjusted price of such items exceed ____ percent (____%) of the total target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(c) *Submission of Data.* Within _____ (__) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items listed in paragraph (b) above, the Contractor shall submit, in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items.

(d) *Price Revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total adjusted cost reasonably incurred or to be incurred for and properly allocable to the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total adjusted price shall be established by adding to the total adjusted cost an allowance for profit determined as follows:

WHEN THE TOTAL ADJUSTED COST IS:	THE ALLOWANCE FOR PROFIT IS:
Equal to the total target cost	Total target profit.
Greater than the total target cost	Total target profit less ____ percent (__%) of the amount by which the total adjusted cost exceeds the total target cost.
Less than the total target cost	Total target profit plus ____ percent (__%) of the amount by which the total adjusted cost is less than the total target cost.

(e) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The Contractor shall segregate the costs of any supplies or services for which the price is fixed and not subject to revision under this clause. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis in connection with the furnishing of the supplies or services identified in paragraph (b) above as being subject to price revision (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract, and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this

(ii), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.

(f) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs to complete is considered reasonable.

(g) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-priced basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) *Contract Modifications.* The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer and shall apply to supplies delivered and to services performed under this contract.

(i) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (h) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract: *Provided,* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (j)(3) below, the parties may agree to revise billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total adjusted price under paragraph (d) above. After execution of the contract modification referred to in paragraph (h) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total adjusted price and any additional payments, refunds, or credits resulting therefrom shall be promptly made.

(j) *Limitation on Payments.* (1) This paragraph (j) shall not apply after final price revison to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a cumulative statement setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4) modified as outlined in (i) above.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total adjusted price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder.

(l) *Termination.* If this contract is terminated prior to establishment of the total adjusted price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

In the event the contract calls for spare parts or other supplies or services, which are to be ordered under a provisioning document or Government option, and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (m) shall be included in such clause:

(m) *Spare Parts.* Spare parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such spare parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such spare parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree.

§ 18–7.109 Price redetermination.

Pending publication of regulations covering price redetermination, the clauses set forth in 32 CFR 7.109 may be used in accordance with instructions set forth therein.

Subpart 18–7.2—Clauses for Cost-Reimbursement Type Supply Contracts

§ 18–7.200 Scope of subpart.

This subpart sets forth uniform contract clauses for use in cost-reimbursement type supply contracts as defined in § 18–7.202.

§ 18–7.202 Applicability.

As used throughout this subpart, the term "cost-reimbursement type supply contract" means any contract, including letter contracts (except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement), entered into on a cost or cost-plus-fixed-fee basis (see § 18–3.400) for supplies other than (a) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property; (b) experimental, developmental, or research work; or (c) facilities to be provided by the Government under a facilities contract as defined in § 18–13.101–17.

§ 18–7.203 Required clauses.

The clauses set forth in this § 18–7.203 shall be inserted in all cost-reimbursement type supply contracts.

§ 18–7.203–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included, provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.203–2 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 18–7.203–3 Limitation of cost.

Insert the following clause except that in letter contracts insert clause 3 of NASA Form 551–3 set forth in § 18–16.859–4(d).

LIMITATION OF COST (SEPTEMBER 1962)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.203–4 Allowable cost, fixed fee and payment.

Insert the following clause except that in letter contracts insert clause 4 of NASA Form 551–3 set forth in § 18–16.859–4(d).

ALLOWABLE COST, FIXED FEE, AND PAYMENT (JANUARY 1964)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incured by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be witheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) when there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one-year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

In paragraph (f)(ii)(B) of the above clause the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided,* That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the "Records" clause set forth in § 18–7.203–7.

§ 18–7.203–5 Inspection of supplies and correction of defects.

INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS (SEPTEMBER 1962)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assem-

blies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

§ 18–7.203–6 Assignment of claims.

In accordance with the requirements of § 18–7.103–8, insert the clause set forth therein.

§ 18–7.203–7 Records.

(a) Except as provided in paragraph (b) of this section, insert the following clause.

RECORDS (AUGUST 1964)

(a) (1) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract and in the case of Facilities contracts the use of and charges for the use of Facilities (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract and in the case of Facilities contracts all use of the Facilities, and all charges to be made for the use of the Facilities.

(2) The Contractor agres to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer, such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4) (B) above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or any of his duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

((b) In the case of contracts which establish separate periods of performance, the following alternate paragraph (a) (4) may be substituted for the corresponding paragraph of the clause prescribed by paragraph (a) of this section.

(a) (4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall

preserve and make available his records (i) for a period of three years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A), (B), or (C) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(C) If the Contractor plans to destroy any records sooner than three years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice," he shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which he plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to be retained for a further specified period of time. (September 1962)

§ 18–7.203–8 Subcontracts.

SUBCONTRACTS (JANUARY 1963)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of $10,000, including any fee; or (ii) is proposed to exceed $100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed $100,000; the advance notification required by (a) above shall include:

(i) a description of the supplies or services to be called for by the subcontract;

(ii) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(iii) the proposed subcontract price, together with the Contractor's cost or price analysis thereof and a statement as to whether the price is based on catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation; and

(iv) identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time and material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7.108 of the NASA Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

In paragraph (c) of the "Subcontracts" clause set forth in this section, the percentage and amount set forth in subparagraph (a) (ii) thereof may be varied, the dollar amount in subparagraph (a) (iii) may be increased, and in subparagraphs (a) (i) and (iv) thereof dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained.

§ 18–7.203–9 Utilization of small business concerns.

In accordance with the requirements set forth in § 18–1.707–3(a), insert the clause contained therein.

§ 18–7.203–10 Termination.

Insert the clause set forth in § 18–8.702.

§ 18–7.203–11 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.203–12 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.203–13 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.203–15 Convict labor.

In accordance with the requirements of Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.203–16 Work Hours Act of 1962—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.302–2 for use in contracts with a State or political subdivision thereof.

§ 18–7.203–17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.203–18 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally-Assisted Construction Contract clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–12.802–2.

§ 18–7.203–19 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.203–20 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.203–21 Government property.

Insert the clause set forth in § 18–13.503.

§ 18–7.203–22 Insurance—liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS (SEPTEMBER 1962)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with

respect to performance under this contract: *Provided,* That the Contractor may with the approval of the Contracting Officer maintain a self-insurance program: *And provided further,* That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied, or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants, or employees: *Provided,* Such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer, or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause: *Provided,* Such cost would constitute allowable cost under the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however,* That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 18–7.203–23 Authorization and consent.

Insert the clause set forth in § 18–9.103(a).

§ 18–7.203–24 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.203–25 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.203–26 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–7.104–20, insert the clause set forth therein.

§ 18–7.203–27 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h)(1).

§ 18–7.203–28 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.203–29 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.203–50 Payment of royalties.

Insert the clause set forth in § 18–9.108–1, except that in contracts with members of the Manufacturers Aircraft Association the clause set forth in § 18–9.108–2 may be substituted therefor.

§ 18–7.203–51 Estimated cost and fixed fee.

Normally, the clause set forth below will be used as the Schedule provision covering the estimated cost and fixed fee. However, the clause may be modified at the discretion of the contracting officer.

ESTIMATED COST AND FIXED FEE (SEPTEMBER 1962)

The estimated cost of this contract is ------ exclusive of the fixed fee of -------. The total of estimated cost and fixed fee is -------.

§ 18–7.203–52 Payment of fixed fee.

Normally, the clause set forth below will be used as the Schedule provision covering the payment of fixed fees. However, at the discretion of the contracting officer, the clause may be modified.

PAYMENT OF FIXED FEE (SEPTEMBER 1962)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

§ 18–7.203–53 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.204 Clauses required to be used when applicable.

§ 18–7.204–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in cost-reimbursement type supply contracts which involve construction work the clauses listed below which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Work Hours Act of 1962—Overtime Compensation.
Apprentices.
Payroll Records and Payrolls.
Copeland ("Anti-Kickback") Act—Nonrebate of wages.
Subcontracts—Termination.
Withholding of Funds to Assure Wage Payment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American" set forth in § 18–6.207(c).

§ 18–7.204–3 Buy American Act.

In accordance with the requirements of Subpart 18–6.1 insert the clause set forth in § 18–6.104–5.

§ 18–7.204–4 Notice to the Government of labor disputes.

In accordance with the requirements of § 18–7.104–4, insert the clause set forth therein.

§ 18–7.204–6 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.204–7 New technology.

In accordance with the requirements of § 18–9.101–2, insert the clause set forth in § 18–9.101–2(c). Where the work to be performed is not the type described in § 18–9.101–2(b) the "New Technology" clause may be deleted when contained in a printed contract form.

§ 18–7.204–9 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause set forth in § 18–9.203–2 and, if applicable, paragraph (j) from § 18–9.203–3.

§ 18–7.204–12 Security requirements.

Insert the clause set forth in this § 18–7.204–12 in all contracts which are classified "Confidential" or higher and in other contracts which may require access to classified information or material:

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) The NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated as of the date of this contract, or thereafter indicates, a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee (if any) shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee (if any) of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.204–15 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.204–16 Negotiated overhead rates.

Where negotiated overhead rates are to be used pursuant to Subpart 18–3.7, the appropriate clause set forth in § 18–3.704 shall be included in the contract.

§ 18–7.204–18 Limitation on withholding of payments.

In accordance with the requirements in § 18–7.104–21, insert the clause set forth therein.

§ 18–7.204–19 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.204–20 Changes to make-or-buy program.

In accordance with the requirements of Subpart 18–3.9, insert the clause set forth in § 18–3.902(a).

§ 18–7.204–26 Preference for United States-flag air and ocean services.

In accordance with the requirements of Subpart 18–1.14, insert the clause set forth in § 18–1.1403.

§ 18–7.204–28 General Services Administration supply sources.

The clause set forth in § 18–5.907 shall be included in contracts in accordance with the instructions set forth therein.

§ 18–7.204–30 Contractor and subcontractor cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.204–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.204–51 Approval of contract.

Insert the clause set forth in § 18–7.104–51 when approval of the contract by the Director of Procurement is required.

§ 18–7.204–53 Limitation of Government's obligation.

Where funding to complete the entire contract is not available at the time it is entered into and specific approval of the Director of Procurement has been obtained for the use of such a clause, insert the clause set forth below in the contract, together with an implementing Schedule provision.

LIMITATION OF GOVERNMENT'S OBLIGATION (SEPTEMBER 1962)

(a) It is estimated that the total cost to the Government, inclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost and fixed fee set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. The fixed fee for complete performance of this contract is specified in the Schedule.

(b) The sum presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is anticipated that from time to time additional funds will be allotted to this contract up to the full estimated cost, including any fixed fee. When additional funds are allotted from time to time for continued performance of the work, the parties shall agree as to the applicable estimated period of contract performance which shall be covered by such funds and the contract Schedule amended accordingly. The Contractor agrees to perform or have performed work on this contract up to the point at which in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination," the total amount paid and payable by the Government pursuant to any settlement including cost and fixed fee under paragraph (e) of such clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to this contract. The Contractor shall not be obligated to continue performance of the work beyond such point.

(c) The Government shall not be obligated to reimburse the Contractor for costs incurred (including amounts payable in respect to subcontracts and termination settlement costs) and to pay any fixed fee to which the Contractor may be entitled in excess of the total amount from time to time allotted to this contract. However, when and to the extent that the total amount allotted to this contract has been increased, any costs incurred by the Contractor and any fixed fee to which the Contractor may be entitled, prior to the increase and in excess of the amount previously allotted, shall be allowable to the same extent as if such costs had been incurred and fee earned after such increase in amount allotted.

(d) In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed for the period set forth in the Schedule, the Contractor shall notify the Contracting Officer in writing when within the next thirty (30) days the work will reach a point at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination," the total amount paid and payable by the Government pursuant to a settlement including cost and fixed fee under paragraph (e) of such clause will approximate eighty-five percent (85%) of the total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. The Contractor shall, thirty (30) days prior to the end of the period specified in the Schedule, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required on the basis of the obligation for performance in accordance with paragraph (b) of this clause for the timely performance of the work under the contract for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule, or an agreed date in substitution therefor, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date, or on a date to be

specified in such request, on which the Contractor, in the exercise of his reasonable judgment, estimates that he will have discharged his obligation to perform hereunder in accordance with paragraph (b) of this clause, whichever is later, pursuant to the provisions of the clause of this contract entitled "Termination."

(e) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree as to the applicable period of contract performance which shall be covered by such funds, and the provisions of paragraphs (b), (c), and (d) of this clause shall apply in like manner to such additional allotted funds and substituted date pertaining thereto, and the contract shall be amended accordingly.

(f) The Government may at any time prior to termination allot additional funds for this contract, and, with the consent of the Contractor, after notice of termination, may rescind such termination in whole or in part, and allot additional funds for this contract.

(g) In the event that sufficient amounts are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled, subject to the limitations of paragraph (c) of this clause, to a percentage of the fixed fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination."

(i) For the purpose of this clause, the allotment or allotments specified in the Schedule shall not be decreased without the consent of the Contractor.

(j) This clause shall be applicable and the clause of this contract entitled "Limitation of Cost" inapplicable until such time as an amount equal to the total estimated cost and fee set forth in the Schedule is allotted to this contract, and thereafter the clause of this contract entitled "Limitation of Cost" shall be applicable and this clause inapplicable.

§ 18–7.204–55 NASA PERT System.

In contracts to which the NASA PERT System (see NASA Management Instruction 4–1–5 and the NASA PERT Handbook) is applicable, insert the following clause:

NASA PERT System (March 1962)

(a) The NASA PERT system shall be implemented and maintained in accordance with the NASA PERT Handbook as in effect on the date of this contract and as it may be amended from time to time.

(b) In the event of an amendment to the NASA PERT Handbook which changes substantially the amount of detail required to be reported or the system of reporting, such amendment shall be treated as a change under the clause of this contract entitled "Changes."

(c) The system shall be implemented by a PERT team consisting of representatives of the Contractor and the NASA. Implementation by the PERT team will commence within 30 days after the date of this contract. The number of networks required and the scope of each network will be established by NASA, after giving due consideration to recommendations of the PERT team. The Contractor's participation, as a member of this team, shall include but not be limited to the following:

Formulation of recommendations as to the number and scope of networks required, development of the networks required, identification of events and activities comprising each of the networks required, and initial estimates of activity time supported by initial estimates of direct labor (in man-hours) associated with each activity time. Implementation of NASA PERT will be complete within 90 days after the date of this contract. Reporting against and updating of individual networks shall commence as soon as individual networks are developed and not await completion of all networks.

(d) Reporting against networks established shall be as described in the NASA PERT Handbook. These reports shall be submitted on alternate Fridays (the reporting date) specified by NASA via mail, TWX, telephone, or such other manner as necessary to reach the NASA Project Manager by the Monday (a.m.) following the report date. The computer input data reported shall be current as of the reporting date.

In the case of major contracts, the requirement for completion of the implementation of the NASA PERT System within three months after the date of the contract may be extended up to six months.

§ 18–7.204–56 NASA financial management reporting.

When financial management reporting on NASA Form 533 is required by NASA Management Instruction 6–2–4A, insert the appropriate clause set forth in paragraph (a) or (b) of this section. The number of copies of NASA Form 533 to be submitted by the contractor shall be specified in the Schedule of the contract.

(a) The following clause shall be used when the NASA PERT System is not applicable to the contract.

NASA Financial Management Reporting (Without PERT) (March 1962)

Financial Management Report shall be submitted by the Contractor on NASA Form 533 in accordance with the instructions on the reverse of the form and in the number of copies set forth in the contract Schedule. The line entries for subdivisions of work and elements of cost to be reported within the total contract shall be determined by NASA, after giving due consideration to the recommendations of the Contractor. Subsequent changes and/or additions in the line entries to be reported shall be similarly determined. The Contracting Officer shall notify the Contractor of each change and addition and the reporting period to which each shall apply. Financial Management Reporting shall commence with a report for the first calendar month following the date of this contract.

(b) When the NASA PERT System is applicable to the contract, the following clause shall be used:

NASA Financial Management Reporting (With PERT) (March 1962)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 in accordance with the instructions on the reverse of the form and in the number of copies set forth in the contract Schedule. The line entries for subdivisions of work and elements of cost to be reported within the total contract shall be determined by NASA, after giving due consideration to the recommendations of a combined PERT/Financial Report implementation team consisting of Contractor and NASA representatives. Subsequent changes and/or additions in the line entries to be reported will be similarly determined. The Contracting Officer will notify the Contractor of each change and addition and the reporting period to which each will apply.

(b) The line entries for subdivisions of work selected for reporting shall be compatible with NASA PERT networks in order to permit integrated time/cost management control and reporting. Establishment of these subdivisions of work shall proceed simultaneously with the development of NASA PERT networks.

(c) Financial Management reporting shall commence with a report for the first calendar month following the date of this contract. Until completion of the implementation of PERT, the line entries of the report shall reflect a summarized breakdown which it is anticipated will approximate the more detailed entries based on PERT networks. Beginning with the first calendar month following completion of the implementation of PERT, the report shall be submitted with line entries fully compatible with PERT networks.

§ 18–7.204–57 Implied licenses.

In accordance with the requirements of § 18–9.110, insert the clause set forth therein.

§ 18–7.205 Additional clauses.

The following clauses shall be inserted if it is desired to cover the subject matter thereof.

§ 18–7.205–1 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.205–4 Bill of materials.

Under the circumstances stated in § 18–7.105–6, the clause set forth therein may be inserted.

§ 18–7.205–5 Federal, State, and local taxes.

At the discretion of the contracting officer and when requested by the contractor, the clause set forth in § 18–11.402 is authorized for use in cost-reimbursement type contracts.

§ 18–7.205–50 Notice of delay.

The clause set forth in this § 18–7.205–50 is authorized for use in situations where it is desirable to provide for notice by the contractor of anticipated delays in performance.

Notice of Delay (September 1962)

If the Contractor becomes unable to complete the contract work at the time specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

§ 18–7.205–51 Program progress reports.

Where the procedures set forth in NASA Management Instruction 6–2–3 relating to the NASA Program Management System are applicable, the clause set forth in this § 18–7.205–11 is author-

ized for use to obtain periodic reports from the contractor concerning the planning and progress of the program called for by the contract.

PROGRAM PROGRESS REPORTS (SEPTEMBER 1962)

(a) The Contractor shall, within ninety (90) days after receipt of a duly executed copy of this contract, submit to the Contracting Officer copies of his Master Summary Schedule to include (i) his planned manpower buildup requirements for performance of this contract, and (ii) a summary of his planned program, with starting and completing dates, as applicable, for accomplishing the pertinent planning, research, development, test, production, operation, delivery, or other milestones representing the significant actions or steps required to accomplish program objectives. Any material change in the foregoing areas shall be reported to the Contracting Officer by revision of the information called for herein.

(b) On specific milestones designated by the NASA Project Manager, the Contractor shall report program progress biweekly on NASA Form 491, in conformity with the instructions printed on the Form.

(c) If and when reporting by the Contractor under the NASA PERT System shall commence, the requirements of paragraph (b) above shall cease as of a date to be prescribed by the Contracting Officer.

§ 18–7.205–52 Date of incurrence of costs.

The following clause is authorized for use when specific coverage of precontract costs is considered desirable.

DATE OF INCURRENCE OF COSTS (OCTOBER 1963)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $_____ on or after _____ which, if incurred after this contract had been entered into, would have been reimbursable under the provisions of this contract.

§ 18–7.205–53 Contractor's independent research program.

When the "New Technology" clause is included in the contract (see § 18–9.101–2) and it is determined that the contractor maintains an independent research program, the clause set forth in § 18–9.101–6 may be included in the Schedule at the contractor's request.

§ 18–7.205–54 Reports of Work.

A "Reports of Work" clause is not prescribed for cost-reimbursement type supply contracts. When it is desired to include such a clause, however, the clause set forth in § 18–7.302–54 may be used or it may serve as a model in drafting the desired clause.

Subpart 18–7.3—Clauses for Fixed-Price Research and Development Contracts

§ 18–7.300 Scope of subpart.

This subpart sets forth uniform clauses for use in fixed-price research and development contracts as defined in § 18–7.301.

§ 18–7.301 Applicability.

As used throughout this subpart, the term "fixed-price research and development contract" means any contract, including letter contracts (except notices of award, contracts placed under Small Purchase Procedures, and amendments or supplemental agreements which do not effect new procurement) which (a) is entered into on a fixed-price basis, (b) is in an amount exceeding $2,500, and (c) is for experimental, developmental, or research work.

§ 18–7.302 Required clauses.

The clauses set forth in this § 18–7.302 shall be inserted, as required, in all fixed-price research and development contracts except as otherwise indicated in this subpart. See § 18–7.350 for short form clauses.

§ 18–7.302–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Aditional definitions may be included, provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.302–2 Payments.

Insert the following clause except that in letter contracts insert clause 4 of NASA Form 551–3 set forth in § 18–16.859–4(d).

PAYMENTS (SEPTEMBER 1962)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

§ 18–7.302–3 Standards of work.

STANDARDS OF WORK (SEPTEMBER 1962)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

§ 18–7.302–4 Inspection.

INSPECTION (SEPTEMBER 1962)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Where a more detailed provision covering inspection is desired, as where the primary contract objective is delivery of end items other than designs, drawings, or reports, the clause set forth below shall be substituted for the above clause, unless the contracting officer determines that use of the longer clause is impracticable.

INSPECTION (SEPTEMBER 1962)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

§ 18–7.302–5 Assignment of claims.

In accordance with the instructions in § 18–7.103–8, insert the clause set forth therein.

§ 18–7.302–6 Examination of records.

Insert the clause set forth in § 18–7.104–15.

§ 18–7.302–7 Federal, State, and local taxes.

Insert the clause set forth in § 18–11.401–1 or § 18–11.401–2(b) in accordance with the requirements of § 18–11.401.

§ 18–7.302–8 Utilization of small business concerns.

In accordance with the requirements of § 18–1.707–3(a), insert the clause set forth therein.

§ 18–7.302–9 Default.

In accordance with the requirements of § 18–8.710, insert the clause set forth therein.

§ 18–7.302–10 Termination for the convenience of the government.

In accordance with the requirements of § 18–8.701 or § 18–8.704–1, insert the appropriate clause.

§ 18–7.302–11 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.302–12 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.302–13 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.302–14 Convict labor.

In accordance with the requirements of Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.302–15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.302–16 Work Hours Act of 1962—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.303–2 for inclusion in contracts with a State or political subdivision thereof.

§ 18–7.302–17 Equal opportunity.

Insert one of the clauses as required by and in accordance with the instructions in § 18–12.802: (a) the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity" clause set forth in § 18–12.802–2.

§ 18–7.302–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.302–19 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.302–21 Authorization and consent.

In accordance with the requirements in § 18–9.103, insert the clause set forth in § 18–9.103(b).

§ 18–7.302–22 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.302–23 New technology or property rights in inventions.

In accordance with the requirements of § 18–9.101–2, insert the "New Technology" or "Property Rights in Inventions" clause, as appropriate.

§ 18–7.302–24 Rights in data.

If data is to be delivered under the contract, insert the clause set forth in § 18–9.203–1. See § 18–9.203 for requirements.

§ 18–7.302–25 Security requirements.

Insert the clause set forth in § 18–7.104–12, except that if the contract is with an educational institution and is awarded on the basis of no profit, insert the clause set forth in § 18–7.451–24.

§ 18–7.302–26 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–7.104–20, insert the clause set forth therein.

§ 18–7.302–53 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.302–54 Reports of work.

A clause requiring the contractor to furnish reports of work shall be included in the Schedule of the contract. An approved clause is set forth in this § 18–7.302–54. Changes in this clause may be made to meet the particular requirements of a procurement. Consideration should be given in each case to the desirability of providing for reports on the completion of significant units or phases of the work, in addition to periodic reports and reports on the completion of the entire contract.

REPORTS OF WORK (SEPTEMBER 1962)

(a) *Monthly Progress Reports.* The Contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, and brief and informal in content. Monthly reports shall include:

(i) a quantitative description of overall progress;

(ii) an indication of any current problems which may impede performance, and proposed corrective action; and

(iii) a discussion of the work to be performed during the next monthly reporting period.

Monthly reports shall be submitted in _____ copies, plus a reproducible copy.

(b) *Quarterly Progress Reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning. Quarterly reports shall be submitted in _____ copies, plus a reproducible copy.

(c) *Final Report.* The Contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawing in sufficient detail to comprehensively explain the results achieved under the contract. The final report shall be submitted in _____ copies, plus a reproducible copy.

§ 18–7.302–55 Implied licenses.

In accordance with the requirements of § 18–9.110, insert the clause set forth therein.

§ 18–7.303 Clauses required to be used when applicable.

The following clauses shall be inserted when applicable in all fixed-price research and development contracts except as indicated in this subpart. See § 18–7.350 for short form clauses.

§ 18–7.303–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in fixed-price research and development contracts which involve construction work the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Work Hours Act of 1962—Overtime Compensation.
Apprentices.
Payroll Records and Payrolls.
Copeland ("Anti-Kickback") Act—Nonrebate of Wages.
Subcontracts—Termination.
Withholding of Funds To Assure Wage Payments.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American," as set forth in §18–6.207(c).

§ 18–7.303–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.303–6 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.303–7 Government-furnished property.

In accordance with the requirements of § 18–13.502–2 or § 18–13.505–2, insert the appropriate clause.

§ 18–7.303–8 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.303–9 Notice to the government of labor disputes.

In accordance with the requirements of § 18–7.104–4, insert the clause set forth therein.

§ 18–7.303–10 Limitation on withholding of payments.

In accordance with the requirements of § 18–7.104–21, insert the clause set forth therein.

§ 18–7.303–11 Small business subcontracting program.

In accordance with the provisions of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.303–12 Subcontracts.

Insert the clause set forth in § 18–7.104–23(a) when required under the circumstances stated therein; if the clause set forth in § 18–7.104–23(a) is not required, the clause set forth in § 18–7.104–23(b) may be inserted.

§ 18–7.303–13 Changes to make-or-buy program.

In accordance with the requirements of Subpart 18–3.9, insert the clause set forth in § 18–3.902(a).

§ 18–7.303–14 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h)(2).

§ 18–7.303–23 Progress payments.

In accordance with the requirements of § 18–7.104–35, insert the appropriate clause as set forth therein.

§ 18–7.303–27 Competition in subcontracting.

In accordance with the requirements of § 18–7.104–40, insert the clause set forth therein.

§ 18–7.303–28 Contractor and subcontractor cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.303–29 Audit and records.

In accordance with the requirements of § 18–7.104–42, insert the clause set forth therein.

§ 18–7.303–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.303–51 Approval of contract.

In accordance with the requirements of § 18–7.104–51, insert the clause set forth therein.

§ 18–7.303–52 Preference for United States-Flag air and ocean services.

Under the circumstances described in Subpart § 18–1.14, insert the clause set forth in § 18–1.1403.

§ 18–7.303–54 Materials reports.

In all research and development contracts calling for hardware or for research and development on materials, the clause set forth in this § 18–7.303–54 shall be inserted in the Schedule of the contract. Generally, the Schedule provision shall be required in all contracts calling for space vehicles, satellites, rockets, propulsion units, rocket motors, satellite and rocket components, instrumentation, and payloads. Contracting officers should discuss the need for such a clause with the project officers and the New Technology Representative (see § 18–9.150) in each instance where it appears that the contract may call for research and development on materials, regardless of whether or not the contract falls within one of the categories enumerated above. The New Technology Representative is assigned the responsibility for administering this clause.

MATERIALS REPORTS (SEPTEMBER 1962)

The Contractor shall furnish to the Contracting Officer, within 30 days after the end of each six-month period of the contract and within 60 days after the completion of the work for the final period of the contract, a separate technical report, prepared in the form of a reproducible master copy suitable for reproduction by multilith, describing in summary form those tests, experiments, developments, studies, and other efforts of the Contractor relating to materials and their processing for use in fulfilling the technical requirements of this contract, which are either conducted or planned during the six-month or final period of this contract to be covered by the report. Such technical report shall include not only positive results, but also negative results which the Contractor considers significant to record, i.e., discarded efforts, unsuccessful tests, experiments, or developments. If no such tests, experiments, developments, studies, or other efforts are conducted or planned during any six-month or final period, the Contractor shall so notify the Contracting Officer in writing in lieu of furnishing the technical report.

§ 18–7.303–55 NASA PERT System.

In accordance with the requirements of § 18–7.204–55, insert the clause set forth therein.

§ 18–7.303–56 NASA financial management reporting.

In accordance with the requirements of § 18–7.204–56, insert the appropriate clause set forth therein.

§ 18–7.304 Additional clauses.

Insert the following clauses if it is desired to cover the subject matter.

§ 18–7.304–1 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 18–7.304–2 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.304–4 Bill of materials.

In accordance with the instructions in § 18–7.105–6, the clause set forth therein may be used.

§ 18–7.304–50 Notice of delay.

In accordance with the instructions in § 18–7.205–50, the clause set forth therein is authorized for use.

§ 18–7.304–51 Program progress reports.

In accordance with the instructions in § 18–7.205–51, insert the clause set forth therein.

§ 18–7.304–59 Price escalation.

The clauses set forth in §§ 18–7.106 and 18–7.107 are authorized for use in accordance with the instructions set forth therein.

§ 18–7.304–60 Incentive price revision.

The clause set forth in § 18–7.108 is authorized for use in accordance with the instructions set forth therein, provided that the advance approval of the Director of Procurement has been obtained.

§ 18–7.304–61 Special tooling.

Where special tooling is to be acquired by the contractor, the clause set forth in § 18–13.504 is authorized for use in accordance with instructions contained therein.

§ 18–7.350 Short form clauses for fixed-price research contracts with nonprofit institutions.

Notwithstanding the provisions of §§ 18–7.302 and 18–7.303, the short form clauses set forth or referred to in this § 18–7.350 shall be used in fixed-price contracts for basic or applied research with nonprofit institutions of higher education, or with nonprofit institutions whose primary purpose is the conduct of scientific research, when a short form contract is desired.

§ 18–7.350–1 Definitions.

Insert the clause set forth in § 7.103–1.

§ 18–7.350–2 Payment.

PAYMENT (SEPTEMBER 1962)

(a) Payment will be made to the Contractor as set forth in the Schedule upon submission of status reports indicating the portion of the work which has been performed and after acceptance by the Contracting Officer. The status reports shall also contain a concise statement of the work which has been performed.

(b) A prerequisite to final payment is the submission by the Contractor of a statement of the amount of funds expended in the performance of this contract and the furnishing to the Contracting Officer, and his acceptance, of the technical reports and patent reports required by this contract.

(c) Status reports, statements of funds expended, and technical reports required by this contract shall be submitted by the Contractor directly to the Chief of the NASA Office of Research Grants and Contracts, Washington, D.C., who is the representative of the Contracting Officer for the purpose of determining the acceptability of such reports and statements.

§ 18–7.350–3 Technical reports and data.

TECHNICAL REPORT AND DATA (SEPTEMBER 1962)

(a) Upon completion of the work under this contract, the Contractor shall submit the number of copies required in the Schedule of a complete and final technical report of his findings and conclusions together with

any original illustrations and photographic negatives. With the prior approval of the Contracting Officer, the Contractor may submit interim technical reports in lieu of the final report at such intervals as may be agreed upon.

(b) The Government may publish, reproduce, or use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information, and other scientific data resulting from this contract.

§ 18–7.350–4 Government-furnished property.

Insert the appropriate clause set forth in § 18–13.505.

§ 18–7.350–5 Release of information.

RELEASE OF INFORMATION (SEPTEMBER 1962)

It is the intent of NASA that the useful research information obtained under this contract be published either by NASA or in technical journals. Reports to be published by NASA should be prepared insofar as practicable in accordance with NASA editorial form. Three (3) copies of the manuscript containing research information obtained under this contract shall be furnished to NASA prior to release of the information by formal oral presentation or for publication in a technical journal. Appropriate credits to NASA will be included in any formal oral presentation or published article. Twenty (20) reprints of articles published in journals shall be furnished to NASA.

§ 18–7.350–6 Security.

SECURITY (SEPTEMBER 1962)

If the subject matter of this contract is classified in the interest of national security, or if it appears that performance on the contract will require access to classified information, the Contractor shall be governed by a Department of Defense Security Agreement (DD Form 441), and the attachment thereto, "The Industrial Security Manual for Safeguarding Classified Information." Further, if information or material is developed pursuant to this contract which appears to require protection in the interest of national security, the Contractor shall notify NASA immediately in order that the appropriate classification category may be assigned, and a Security Agreement executed, if necessary.

§ 18–7.350–7 Property rights in inventions.

Insert the clause set forth in § 18–9.101–2(d).

§ 18–7.350–8 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.350–9 Termination at the option of the Government.

TERMINATION AT THE OPTION OF THE GOVERNMENT (SEPTEMBER 1962)

The performance of work under this contract may be terminated by the Government in whole or in part, whenever the Contracting Officer shall determine that such action is in the best interest of the Government. If this contract is so terminated, fair compensation for work performed will be provided for the Contractor.

§ 18–7.350–10 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.350–11 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.350–12 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.350–13 Examination of records.

Insert the clause set forth in § 18–7.104–15.

§ 18–7.350–14 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–12.802–2.

§ 18–7.350–15 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.350–16 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.350–17 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.350–18 Audit and records.

In accordance with the requirements of § 18–7.104–42, insert the clause set forth therein.

§ 18–7.350–19 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18–7.302, 18–7.303, and 18–7.304 may be added to or substituted for the clauses set forth in §§ 18–7.350–1 through 18–7.350–17; however, care should be exercised to ensure that there are no inconsistencies.

Subpart 18–7.4—Clauses for Cost-Reimbursement Type Research and Development Contracts

§ 18–7.400 Scope of subpart.

This subpart sets forth uniform clauses for use in NASA cost-reimbursement type research and development contracts as defined in § 18–7.401.

§ 18–7.401 Applicability.

As used throughout this subpart, the term "cost-reimbursement type research and development contract" means any contract, including letter contracts (except notices of award, contracts placed under "Small Purchases Procedures," and amendments or supplemental agreements which do not effect new procurement), which (a) is entered into on a cost, cost-sharing, or cost-plus-a-fixed-fee basis, and (b) is for experimental, developmental, or research work.

§ 18–7.402 Required clauses for contracts with fee.

The clauses set forth in this § 18–7.402 shall be inserted in all cost-reimbursement type research and development contracts providing for a fee.

§ 18–7.402–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.402–2 Limitation of cost.

Insert the following clause except that in letter contracts insert clause 3 of NASA Form 551–3 set forth in § 18–16.859–4(d).

LIMITATION OF COST (JANUARY 1964)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.402–3 Allowable cost, fixed fee, and payment.

In accordance with the instructions set forth in § 18–7.203–4, insert the clause set forth therein.

§ 18–7.402–4 Standards of work.

Insert the clause set forth in § 18–7.302–3.

§ 18–7.402–5 Inspection and correction of defects.

INSPECTION AND CORRECTION OF DEFECTS (SEPTEMBER 1962)

(a) All work under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of

the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if final acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract if such failure is due to fraud, lack of good faith, or willful misconduct on the part of any one of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six (6) months after its acceptance.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

In the foregoing clause, the words "Task Order" or other suitable designation may be substituted for "Schedule," as appropriate.

§ 18–7.402–6 Assignment of claims.

In accordance with the requirements in § 18–7.103–8, insert the clause set forth therein.

§ 18–7.402–7 Records.

Insert the clause set forth in § 18–7.203–7. In the case of contracts which establish separate periods of performance, alternate subparagraph (a)(4), set forth in § 18–7.203–7(b), may be substituted for the corresponding subparagraph of the clause prescribed in § 18–7.203–7(a).

§ 18–7.402–8 Subcontracts.

(a) Insert the clause set forth in § 18–7.203–8, substituting for paragraph (c) thereof the following paragraph (c):

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time and material or labor-hour basis, or (v) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c). (September 1962)

(b) The following changes may be made in paragraph (c) of the above clause:

(1) The percentage and amount in subparagraph (ii) may be varied;

(2) The dollar amount in subparagraph (iii) may be increased; and

(3) Dollar amounts not in excess of $10,000 may be established in subparagraphs (i), (iv) and (v) below which the prior written consent of the contracting officer need not be obtained.

§ 18–7.402–9 Utilization of small business concerns.

In accordance with the requirements of § 18–1.707–3(a), insert the clause set forth therein.

§ 18–7.402–10 Termination.

In accordance with the requirements of § 18–8.702, insert the appropriate clause set forth therein.

§ 18–7.402–11 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.402–12 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.402–13 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.402–14 Convict labor.

In accordance with the requirements in Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.402–15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.402–16 Work Hours Act of 1962—overtime compensation.

Insert the clause set forth in §18–12.303–1. Note the introductory language required by § 18–12.303–2 for inclusion in contracts with a State or political subdivision thereof.

§ 18–7.402–17 Equal opportunity.

Insert one of the following clauses as required by and in accordance with the instructions in § 18–12.802: (a) the "Equal Opportunity in Federally-Assisted Construction Contracts" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity" clause set forth in § 18–12.–802–2.

§ 18–7.402–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.402–19 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503

§ 18–7.402–20 Authorization and consent.

Insert the clause prescribed in § 18–9.103(b).

§ 18–7.402–21 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.402–22 *New technology.*

In accordance with the requirements of § 18–9.101–2, insert the clause set forth in § 18–9.101–2(c).

§ 18–7.402–23 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause set forth in § 18–9.203–1.

§ 18–7.402–24 Security requirements.

Insert the clause set forth in § 18–7.204–12.

§ 18–7.402–25 Government property.

Insert the clause set forth in § 18–13.503.

§ 18–7.402–26 Insurance—liability to third persons.

(a) Except under the circumstances stated in paragraph (b) or (c) of this section, insert the clause set forth in § 18–7.203–22.

(b) If the contractor claims total immunity from tort liability as a State agency or as a charitable institution, the following clause shall be used in lieu of the clause contained in § 18–7.203–22.

LIABILITY TO THIRD PERSONS (SEPTEMBER 1962)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract thereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(c) If the contractor claims partial immunity from tort liability as a State agency or as a charitable institution (as where work may be performed under the contract in a place or under the conditions where the contractor is not immune from tort liability), the paragraph (e) clause set forth below may be added to the "Insurance—Liability to Third Persons" clause contained in § 18–7.203–22.

(e) Notwithstanding paragraphs (a) and (c) of this clause, (i) the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder; and (ii) the Contractor need not procure or maintain insurance coverage as provided in paragraph (a) of this clause: *Provided,* The Contractor may obtain any insurance coverage he deems necessary subject to approval by the Contracting Officer as to form, amount, and duration, in which event the Contractor shall be reimbursed (A) for the cost of such insurance and (B) to the extent provided in paragraph (c) above, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount. (September 1962)

§ 18–7.402–27 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–7.104–20, insert the clause set forth therein.

§ 18–7.402–28 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102–3(d), insert the clause set forth in § 18–12.102–3(h)(1).

§ 18–7.402–29 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.402–30 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.402–50 Payment of royalties.

In accordance with the instructions in § 18–7.203–51, insert the clause set forth in § 18–9.108–1, except that if the contractor is a member of the Manufacturers Aircraft Association, the clause set forth in § 18–9.108–2 may be substituted therefor.

§ 18–7.402–51 Estimated cost and fixed fee.

In accordance with the requirements of § 18–7.203–51, insert the clause set forth therein.

§ 18–7.402–52 Payment of fixed fee.

In accordance with the requirements of § 18–7.203–52, insert the clause set forth therein.

§ 18–7.402–53 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.402–54 Reports of work.

See § 18–7.302–54 for guidance and a clause approved for use.

§ 18–7.402–55 Implied licenses.

In accordance with the requirements of § 18–9.110, insert the clause set forth therein.

§ 18–7.403 Clauses required to be used when applicable.

The clauses set forth in this § 18–7.403 shall be inserted, when applicable, in all cost-reimbursement type research and development contracts providing for a fee.

§ 18–7.403–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in cost-reimbursement type research and development contracts which involve construction work the clauses listed below which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Work Hours Act of 1962—Overtime Compensation.
Apprentices.
Payroll Records and Payrolls.
Copeland ("Anti-Kickback") Act—Nonrebate of Wages.
Subcontracts—Termination.
Withholding of Funds to Assure Wage Payment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.403–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.403–5 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.403–7 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.403–8 Soviet-controlled areas.

In accordance with the requirements of §18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.403–9 Negotiated overhead rates.

In accordance with the requirements of § 18–3.704, insert the appropriate clause set forth therein.

§ 18–7.403–10 Notice to the Government of labor disputes.

Whenever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the clause set forth in § 18–7.104–4.

§ 18–7.403–11 Contractor and subcontractor cost or pricing data.

In accordance with the requirements of § 18–3.802–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.403–12 Limitation on withholding of payments.

In accordance with the requirements of § 18–7.104–21, insert the clause set forth therein.

§ 18–7.403–13 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.403–14 Changes to make-or-buy program.

In accordance with the requirements of Subpart 18–3.9, insert the clause set forth in § 18–3.902(a).

§ 18–7.403–23 GSA supply sources.

The clause set forth in § 18–5.907 shall be included in contracts in accordance with instructions contained therein.

§ 18–7.403–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.403–51 Approval of contract.

The clause set forth in § 18–7.104–51 shall be included in contracts which require approval by the Director of Procurement.

§ 18–7.403–52 Preference for United States-flag air and ocean services.

Under the circumstances described in Subpart 18–1.14 insert the clause set forth in § 18–1.1403.

§ 18–7.403–53 Limitation of Government's obligation.

Where funding to complete the entire contract is not available at the time it is entered into, the clause set forth in § 18–7.204–53 shall be included in the contract, with an implementing Schedule provision.

§ 18–7.403–54 Materials reports.

In accordance with the requirements of § 18–7.303–54, insert the clause set forth therein.

§ 18–7.403–55 NASA PERT system.

In accordance with the requirements of § 18–7.204–55, insert the clause set forth therein.

§ 18–7.403–56 Financial management reporting.

In accordance with the requirements of § 18–7.204–56, insert the appropriate clause set forth therein.

§ 18–7.404 Additional clauses.

The clauses set forth in this § 18–7.404 shall be inserted in cost-reimbursement type research and development contracts providing for a fee, when it is desired to cover the subject matter.

§ 18–7.404–1 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provision of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 18–7.404–2 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.404–4 Bill of materials.

The clause set forth in § 18–7.105–6 may be inserted pursuant to the provisions thereof.

§ 18–7.404–50 Notice of delay.

In accordance with the instructions in § 18–7.205–51, the clause set forth therein is authorized for use.

§ 18–7.404–51 Program progress reports.

The clause set forth in § 18–7.205–51 may be inserted.

§ 18–7.404–52 Date of incurrence of costs.

The clause set forth in § 18–7.205–52 may be inserted.

§ 18–7.404–53 Contractor's independent research program.

When the "New Technology" or "Property Rights in Inventions" clause is included in the contract (see § 18–9.101–2) and it is determined that the contractor maintains an independent research program, the clause set forth in § 18–9.101–6 may be included in the Schedule at the contractor's request.

§ 18–7.404–57 Federal, State, and local taxes.

At the discretion of the contracting officer and when requested by the contractor, the clause set forth in § 18–11.402 may be inserted in cost-reimbursement type contracts.

§ 18–7.450 Clauses for cost-reimbursement research and development contracts with nonprofit institutions (including educational institutions).

§ 18–7.450–1 Applicability.

Sections 18–7.541, 18–7.452, and 18–7.453, including their subparagraphs, are applicable to cost-reimbursement type research and development contracts with nonprofit institutions (including educational institutions), as defined in § 18–4.5102(c), which involve no fee or profit.

§ 18–7.451 Required clauses.

Except as otherwise provided in § 18–7.460, the clauses set forth in this § 18–7.451 shall be inserted in all contracts specified in § 18–7.450–1.

§ 18–7.451–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.451–2 Limitation of cost.

Insert the following clause:

LIMITATION OF COST (SEPTEMBER 1962)

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.451–3 Allowable cost and payment.

Insert the following clause:

ALLOWABLE COST AND PAYMENT (JANUARY 1964)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract, except that if the Contractor is not an educational institution the allowable costs shall be determined in accordance with Part 15, Subpart 2, of said Regulation; and

(ii) the terms of this contract.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c)(1) Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of paragraph (d) below, make payment thereon as approved by the Contracting Officer.

(2) After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent

(1%) of such total estimated cost, or ten thousand dollars ($10,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment therefore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided*, That such claims are not known to the Contractor on the date of the execution of the release, and *Provided further*, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) when there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one (1) year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

§ 18–7.451–4 Standards of work.

Insert the clause set forth in § 18–7.302–3.

§ 18–7.451–5 Inspection.

Insert the first clause set forth in § 18–7.302–4(a). However, where a more detailed provision covering inspection is desired, as where the primary contract objective is the delivery of end items, rather than designs, drawings, or reports, the "Inspection" clause set forth in § 18–7.402–5 shall be used.

§ 18–7.451–6 Assignment of claims.

In accordance with the requirements of § 18–7.103–8, insert the clause set forth therein.

§ 18–7.451–7 Records.

Insert the clause set forth in § 18–7.203–7. Pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things shall not be required pursuant to paragraph (a)(3) of said Records clause. In the case of contracts which establish separate periods of performance, the alternate paragraph (a)(4) clause set forth in § 18–7.203–7(b) may be submitted for the corresponding paragraph of the clause prescribed in § 18–7.203–7(a).

§ 18–7.451–8 Subcontracts.

SUBCONTRACTS (JANUARY 1963)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of $10,000, including any fee; or (ii) is proposed to exceed $100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed $100,000; the advance notification required by (a) above shall include:

(i) a description of the supplies or services to be called for by the subcontract;

(ii) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(iii) the proposed subcontract price, together with the Contractor's cost or price analysis thereof and a statement as to whether the price is based on catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation; and

(iv) identification of the type of contract proposed to be used.

(c) (1) Except as provided in subparagraph (2) below, the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which:

(i) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract;

(ii) is on a cost or cost-plus-a-fixed-fee basis;

(iii) is on a time and material or labor-hour basis;

(iv) has experimental, developmental, or research work as one of its purposes; or

(v) provides for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities, or of special tooling having a value in excess of $1,000. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(2) If this contract is with an educational institution, then provision (v) above is not applicable, but provisions (vi) and (vii) set forth below are added to the list of provisions included in subparagraph (1) and considered a part thereof.

(vi) provides for the construction, purchase, rental, installation, or other acquisition of nonseverable industrial facilities, or

(vii) provides for the fabrication, purchase, rental, installation, or other acquisition of any item of either (A) severable industrial facilities having a value in excess of $1,000 or the amount, if any, specified in the Schedule or Task Order, whichever is the lesser, or (B) special tooling having a value in excess of $1,000.

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7.108 of the NASA Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and

of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors that are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

The percentage and amount set forth in subparagraph (i) of paragraph (c) (1) of the clause set forth in this § 18–7.451–8 may be varied, and in subparagraphs (ii), (iii) and (iv) of paragraph (c)(1), dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained. In addition to the foregoing authorized variations, in contracts with nonprofit institutions (other than educational institutions), the dollar amount set forth in subparagraph (v) may be increased.

§ 18–7.451–9 Utilization of small business concerns.

In accordance with the requirements of § 18–1.707–3(a), insert the clause set forth therein.

§ 18–7.451–10 Termination for the convenience of the Government.

In accordance with the requirements of § 18–8.704–1, insert the clause set forth therein.

§ 18–7.451–11 Disputes.

Insert the clause set forth in §18–7.103–12.

§ 18–7.451–12 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.451–13 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.451–14 Convict labor.

In accordance with the requirements of Subpart 18–21.2, insert the clause set forth in § 18–12.203.

§ 18–7.451–15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.451–16 Work Hours Act of 1962—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.303–2 for inclusion in contracts with a State or political subdivision thereof.

§ 18–7.451–17 Equal opportunity.

Insert one or the other of the clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–12.802–2.

§ 18–7.451–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.451–19 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.451–20 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.451–21 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.451–22 New technology or property rights in inventions.

In accordance with the requirements of § 18–9.101–2, insert the New Technology or Property Rights in Inventions clause, as appropriate.

§ 18–7.451–23 Rights in data.

In accordance with the requirements of § 18–9.203 insert the clause set forth in § 18–9.203–1.

§ 18–7.451–24 Security requirements.

Insert the clause set forth in this § 18–7.451–24 only in contracts without fee with educational institutions. In contracts with nonprofit institutions which are not educational institutions, insert the clause set forth in § 18–7.204–12.

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of NASA shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (i) in a change in the security classification of this contract or any element thereof from a nonclassified status to a classified status or from a lower classification to a higher classification or (ii) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with his established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements he shall so notify the Contracting Officer in writing.

(f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (i) the application to this contract of such change in security classification or requirements has not been withdrawn, or (ii) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. Thereupon the Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and such termination shall be deemed a termination under the provisions of the clause of this contract entitled, "Termination for the Convenience of the Government."

(h) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the langauge of this clause, including this paragraph (h) but excluding paragraphs (e), (f), and (g) of this clause. In addition, the Contractor may insert in any subcontract, not involving fee or profit, with an educational institution, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions extending to such subcontracts relief consistent with that provided for in those paragraphs, on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. With respect to subcontracts other than those covered by the preceding

sentence, "the mutually satisfactory method" provided for in paragraph (f) above may include a provision amending this contract to provide for an equitable adjustment on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved; and the Contractor may insert in any such subcontract, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions with respect to such equitable adjustment. Failure of the Contractor and Contracting Officer to agree to any adjustment pursuant to the preceding sentence shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(i) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the performance of a subcontract hereunder which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance which is still in effect, prior to being accorded access to such classified information.

§ 18–7.451–25 Government property.

In accordance with the requirements of § 18–13.506, insert the appropriate clause set forth therein.

§ 18–7.451–26 Insurance—liability to third persons.

In accordance with the requirements of § 18–7.402–26, insert either the clause set forth in § 18–7.203–22 or the appropriate clause indicated in § 18–7.402–26. When the clause in § 18–7.203–22 is used, the title "Allowable Cost, Fixed Fee, and Payment" in paragraph (c) of the clause will be changed to read "Allowable Cost and Payment."

§ 18–7.451–27 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–7.104–20, insert the clause set forth therein.

§ 18–7.451–28 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102–3(d), insert the clause as set forth in § 18–12.102–3(h)(1).

§ 18–7.451–29 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.451–30 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.451–50 Payment of royalties.

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payments by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of supplies, materials, or components, shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

§ 18–7.451–51 Estimated cost.

Normally, the clause set forth below will be used as the Schedule provision covering the estimated cost. However, the clause may be modified at the discretion of the contracting officer.

ESTIMATED COST (SEPTEMBER 1962)

The estimated cost of this contract is $_____.

§ 18–7.451–54 Reports of work.

See § 18–7.302–54 for guidance and a clause approved for use.

§ 18–7.451–55 Implied licenses.

In accordance with the requirements of § 18–9.110, insert the clause set forth therein.

§ 18–7.452 Clauses required to be used when applicable.

Except as otherwise provided in § 18–7.460, the clauses set forth in this § 18–7.452 shall be inserted, when applicable, in all contracts specified in § 18–7.450–1.

§ 18–7.452–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in cost-reimbursement type research and development contracts with educational or nonprofit institutions where construction work is involved the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Work Hours of 1962—Overtime Compensation.
Apprentices.
Payroll Records and Payrolls.
Copeland ("Anti-Kickback") Act—Nonrebate of Wages.
Withholding of Funds to Assure Wage Payment.
Subcontracts—Termination.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.452–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.452–7 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.452–8 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.452–9 Negotiated overhead rates.

Where negotiated overhead rates are to be used pursuant to Subpart 18–3.7, the appropriate clause set forth in § 18–3.704 shall be included in the contract.

§ 18–7.452–10 Notice to the Government of labor disputes.

Whenever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the clause set forth in § 18–7.104–4.

§ 18–7.452–11 Contractor and subcontractor cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.452–12 Limitation on withholding of payments.

In accordance with the requirements of § 18–7.104–21, insert the clause set forth therein.

§ 18–7.452–13 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.452–14 Changes to make-or-buy program.

In accordance with the requirements of Subpart 18–3.9, insert the clause set forth in § 18–3.902(a).

§ 18–7.452–23 GSA supply sources.

In accordance with the requirements of § 18–5.907, the clause set forth therein shall be included in the contract.

§ 18–7.452–50 Data requirements.

In accordance with the requirements of Subpart 18–9.2, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.452–51 Approval of contract.

The clause set forth in § 18–7.104–51 shall be included when approval of the contract by the Director of Procurement is required.

§ 18–7.452–52 Preference for United States-flag air and ocean services.

Under the circumstances described in Subpart 18–1.14, insert the clause set forth in § 18–1.1403.

§ 18–7.452–53 Limitation of Government's obligation.

Where funding to complete the entire contract is not available at the time it is entered into, the clause set forth in § 18–7.204–53 shall be included in the contract, with an implementing Schedule provision.

§ 18–7.452–54 Materials reports.

In accordance with the requirements of § 18–7.303–54, insert the clause set forth therein.

§ 18–7.452–55 NASA PERT System.

In accordance with the requirements of § 18–7.204–55, insert the clause set forth therein.

§ 18–7.452–56 NASA financial management reporting.

In accordance with the requirements of § 18–7.204–56, insert the appropriate clause set forth therein.

§ 18–7.453 Additional clauses.

Except as otherwise provided in § 18–7.460, the clauses set forth in this § 18–7.453 shall be inserted in all contracts prescribed in § 18–7.450–1 if it is desired to cover the subject matter.

§ 18–7.453–1 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provision of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 18–7.453–2 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.453–4 Bill of materials.

The clause set forth in § 18–7.105–6 may be inserted pursuant to the provisions thereof.

§ 18–7.453–50 Notice of delay.

The clause set forth in § 18–7.205–50 is authorized for use when it is desirable to provide for notice by the contractor to the Government of anticipated delays in performance.

§ 18–7.453–51 Program progress reports.

The clause set forth in § 18–7.205–51 may be inserted.

§ 18–7.453–52 Date of incurrence of costs.

The clause set forth in § 18–7.205–52 is authorized for use where specific coverages of anticipatory costs is considered desirable.

§ 18–7.453–53 Contractor's independent research program.

In accordance with the instructions in § 18–7.205–53, the clause set forth in § 18–9.101–6 may be inserted.

§ 18–7.453–57 Federal, State, and local taxes.

The clause set forth in § 18–11.402 is authorized for use at the discretion of the contracting officer and when requested by the contractor.

§ 18–7.453–58 Excusable delays.

The clause set forth in § 18–8.708 may be inserted in the contract.

§ 18–7.460 Short form clauses for cost-reimbursement type research contracts with nonprofit institutions (including educational institutions).

Notwithstanding the provisions of §§ 18–7.402, 18–7.403, 18–7.451, and 18–7.452, the clauses set forth or referred to in this § 18–7.460 shall be used in contracts for basic or applied scientific research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research when a short form contract is desired. (See § 18–4.5102(c) for the definition of nonprofit institution.)

§ 18–7.460–1 Definitions.

Insert the clause set forth in § 18–7.103–1.

§ 18–7.460–2 Limitation of cost—allowable cost and payment.

Insert the following clause.

LIMITATION OF COST—ALLOWABLE COST AND PAYMENT (JANUARY 1964)

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total estimated cost of this contract, including any amendments hereto, or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall specify the new revised estimated cost. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase.

(c) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract, except that if the Contractor is not an educational institution the allowable costs shall be determined in accordance with Part 15, Subpart 2, of said Regulation; and

(ii) the terms of this contract.

(d) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost. Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of paragraph (e) below, make payment thereon as approved by the Contracting Officer.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(f) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the below-listed provisions), the Government shall promptly pay to the Contractor any balance of allowable costs otherwise not paid to the Contractor.

(g) Prior to final payment under this contract, the Contractor shall deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release, *And provided further* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) when there is included in the Schedule of this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one (1) year period after final payment.

§ 18–7.460–3 Government property.

Insert the appropriate clause set forth in § 18–13.506.

§ 18–7.460–4 Subcontracts.

Insert the clause set forth in § 18–7.451–8. See instructions following the clause for authorized changes.

§ 18–7.460–5 Insurance—liability to third persons.

In accordance with the requirements of § 18–7.402–26, insert either the clause set forth in § 18–7.203–22 or the appropriate clause indicated in § 18–7.402–26. When the clause in § 18–7.203–22 is used, the title "Allowable Cost, Fixed Fee, and Payment" in paragraph (c) of the clause shall be changed to read "Limitation of Cost—Allowable Cost and Payment."

§ 18–7.460–6 Records.

Insert the clause set forth in § 18–7.203–7. Pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to paragraph (a)(3) of said "Records" clause. In the case of contracts which establish separate periods of performance, alternate paragraph (a)(4) clause, set forth in § 18–7.203–7(b), may be substituted for the corresponding paragraph of the clause prescribed in § 18–7.203–7(a).

§ 18–7.460–7 Release of information.

Insert the clause set forth in § 18–7.350–5.

§ 18–7.460–8 Property rights in inventions.

Insert the clause set forth in § 18–9.101–2(d).

§ 18–7.460–9 Data and inspection.

DATA AND INSPECTION (SEPTEMBER 1962)

The Government may publish, reproduce, and use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information, and other scientific data resulting from this contract. The Government has the right, at all reasonable times, to inspect or otherwise evaluate the work being performed under this contract.

§ 18–7.460–10 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.460–11 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.460–12 Security.

Insert the clause set forth in § 18–7.350–6.

§ 18–7.460–13 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.460–14 Termination.

Insert the clause set forth in § 18–8.705–50(b).

§ 18–7.460–15 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.460–16 Equal opportunity.

Insert one of the clauses as required by and in accordance with the instructions in § 18–12.802: (a) the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity" clause set forth in § 18–12.802–2.

§ 18–7.460–17 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.460–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.460–19 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.460–20 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.461 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18–7.402, 18–7.403, 18–7.404, 18–7.451, 18–7.452, and 18–7.453 may be added to or substituted for the clauses set forth in §§ 18–7.460–1 through 18–7.460–19; however, care should be exercised to ensure that there are no inconsistencies.

Subpart 18–7.7—Clauses for Facilities Contracts

§ 18–7.701 Applicability.

As used throughout this Subpart 18–7, the term "facilities contract" has the meaning given in § 18–13.101–17. Facilities contracts may take any of the following forms:

(a) Facilities acquisition contracts, which provide for the acquisition, construction, and installation of facilities;

(b) Facilities use contracts, which provide for the use, maintenance, accountability, and disposition of facilities; or

(c) Consolidated facilities contracts, which provide for both (1) the acquisition, construction, and installation of facilities, and (2) the use, maintenance, accountability, and disposition of facilities.

§ 18–7.702 Required clauses for facilities acquisition contracts.

The clauses set forth in this § 18–7.702 shall be inserted in all facilities acquisition contracts.

§ 18–7.702–1 Definitions.

DEFINITIONS (MARCH 1963)

As used throughout this Contract the following terms shall have the meanings set forth below:

(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this Contract, the term "Subcontracts" includes purchase orders under this Contract.

(d) The term "NASA" means the National Aeronautics and Space Administration.

(e) "Related Procurement Contract" means a Government contract or subcontract for furnishing supplies or services of any description for the performance of which the use of the facilities is or may be authorized.

(f) "Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes but is not limited to raw and processed material, parts, components, assemblies, small tools, and supplies which may be consumed in normal use in the performance of the contract.

(g) "Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements therefor, acquired or manufactured by the contractor for use in the performance of a contract or subcontract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include:

(i) items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, where minor alteration is required for use in the performance of the contract, or

(ii) consumable small tools, or

(iii) general or special machine tools, or similar capital items.

(h) "Facilities" means property, other than material and special tooling, to be used for the performance of a contract or subcontract, including but not limited to real property and rights therein, buildings, structures, improvements, and plant equipment.

§ 18–7.702–2 Representations and warranties.

REPRESENTATIONS AND WARRANTIES (MARCH 1963)

(a) The Government makes no warranty, express or implied, regarding the condition of fitness for use of any item of the Facilities. To the extent practicable, the Contractor shall be afforded an opportunity to inspect all items of Facilities that are to be furnished by the Government prior to the shipment of such Facilities to the Contractor. In the event that any item of such Facilities is received by the Contractor in a condition not suitable for the intended use the Contractor shall, within thirty (30) days after receipt and installation thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it, or (ii) effect repairs or modifications.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by the return or disposition, or the repair or modification, of

any item of Facilities under paragraph (a) above.

§ 18–7.702–3 Inspection.

INSPECTION (MARCH 1963)

(a) The Facilities and work called for by this contract shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the Facilities and work called for by this contract. The Government, through any authorized representative, may inspect such Facilities and work at the plant or plants of the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work to be performed by the Contractor under this contract or any related procurement contract.

(b) The Contracting Officer may at any time require the Contractor to remedy by correction or replacement any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) below, such corrections and replacements shall be carried out at Government expense if under the terms of this contract the Facilities or work thus corrected or replaced were initially provided or required to be performed at Government expense.

(c) The Contracting Officer may at any time require the Contractor, without cost to the Government hereunder or under any of his related procurement contracts or subcontracts, to correct or replace any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who has supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(d) Corrected or replaced Facilities or work shall be subject to the provisions of this clause in the same manner and to the same extent as Facilities or work originally completed under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer periods as may be specified in this contract.

§ 18–7.702–4 Government bills of lading.

GOVERNMENT BILLS OF LADING (MARCH 1963)

All shipments of the Facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.

§ 18–7.702–5 Limitation of cost.

LIMITATION OF COST (MARCH 1963)

(a) It is estimated that the total cost to the Government for the performance of work under the Schedule of this contract which is provided herein to be at Government expense will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform such work within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of such work in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of such work will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of such work.

(b) The Government shall not be obligated to reimburse the Contractor under this contract for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue the performance of work under this contract which is provided herein to be at Government expense, or to incur costs therefor, in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performing such work. When and to the extent that the estimated cost set forth in the Schedule has been increased any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.702–6 Records.

Insert the clause set forth in § 18–7.203–7.

§ 18–7.702–7 Title.

TITLE (MARCH 1963)

(a) Title to all Facilities and components furnished by the Government shall remain in the Government. Title to all Facilities and components purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(b) Title to the Facilities shall not be affected by their incorporation in or attachment to any property not owned by the Government, nor shall any item of the Facilities be or become a fixture or lose its identity as personalty by reason of affixation to any realty. Except as otherwise authorized by this contract or by the Contracting Officer, the Contractor (i) shall keep the Facilities free and clear of all liens and encumbrances, and (ii) shall not remove or otherwise part with possession of, or permit the use by others of any of the Facilities.

(c) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange on premises furnished by the Government hereunder, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it is affixed to realty owned by the Government, unless it is so permanently attached to such realty as to be nonremovable without substantial injury, as determined by the Contracting Officer, to the property of the Government.

§ 18–7.702–8 Access.

ACCESS (MARCH 1963)

The Government and any persons designated by it shall at all reasonable times have access to the premises where any of the Facilities are located.

§ 18–7.702–9 Liability for the facilities.

LIABILITY FOR THE FACILITIES (MARCH 1963)

(a) The Contractor shall not be liable for any loss or damage to the Facilities, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from:

(i) a risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;

(ii) a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of said insurance or reimbursement;

(iii) willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the Contractor's business, (B) all or substantially all of the Contractor's operations at any one plant or separate location in which the Facilities are installed or located, or (C) any separate and complete major industrial operation in connection with which the Facilities are used;

(iv) a failure, due to willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, or other representatives mentioned in (iii) above, (A) to maintain a program for the protection and preservation of the Facilities, or (B) to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities;

(v) a risk for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

Provided That, if more than one of the exceptions numbered (i) through (v) above shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(b) This clause shall not be construed as relieving a subcontractor hereunder from liability for loss or destruction of or damage to Facilities in his possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provision requiring the return of all Facilities in as good condition as when received except for reasonable wear and tear or for the utilization of the property

in accordance with the provisions of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time and with such insurers (including the Contractor as self-insurer in appropriate circumstances, if so approved) as the Contracting Officer shall require or approve. Such insurance shall contain provision for thirty (30) days prior notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer. The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract to be carried by the Contractor on the Facilities, deliver to said Contracting Officer a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the name of the United States of America (National Aeronautics and Space Administration), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with the Contractor and the proceeds, at the direction of the Government, shall be paid to the Contractor. Proceeds not paid to the Contractor shall be paid to the Treasurer of the United States of America."

(d) Upon the happening of any loss or destruction of or any damage to the Facilities:

(i) the Contractor shall promptly notify the Contracting Officer thereof, and with the assistance of the Contracting Officer shall take all reasonable steps to protect the Facilities from further damage, separate the damaged and undamaged Facilities, put all the Facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to, the Facilities has occurred) a statement of (A) the lost, destroyed, and damaged Facilities, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Facilities are a part, and (D) the insurance, if any, covering any part of or interest in such commingled property;

(ii) the Contractor shall make such repairs, replacements and renovations of the lost, destroyed or damaged Facilities, or take such other action, as the Contracting Officer may direct in writing.

The Contractor shall perform his obligations under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss or destruction under the terms of this clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obligated to replace or repair the Facilities which have been lost, destroyed or damaged. In such event the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

(f) Except to the extent of any loss or destruction of or damage to the Facilities for which the Contractor is relieved of liability, the Facilities shall be returned to the Government or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as they should have been subsequently improved under the terms of this contract, less ordinary wear and tear.

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the Facilities, he shall, to the extent and as directed by the Contracting Officer (i) use the proceeds to repair, renovate, or replace the Facilities involved, or (ii) pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the Facilities, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

§ 18–7.702–10 Indemnification of the Government.

INDEMNIFICATION OF THE GOVERNMENT (MARCH 1963)

Except as provided in the "Insurance—Liability to Third Persons" clause, the Contractor shall indemnify and hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Facilities. However, the provisions of the Contractor's related procurement contracts shall govern the Government's assumption of liability for such claims arising out of or related to the performance of each such related procurement contract and involving the possession or use of the Facilities.

§ 18–7.702–11 Failure to perform.

FAILURE TO PERFORM (MARCH 1963)

(a) Subject to the provisions of the clause hereof entitled "Excusable Delays," if the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. Thereafter, notwithstanding any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related procurement contract, to the extent that such equitable adjustment arises out of the Contractor's failure to perform or such reasonable remedial action as may be taken by the Contracting Officer predicated upon such failure.

(b) The failure of the Government to insist, in any one or more instances, upon the performance of any term or terms of this contract shall not be construed as a waiver or relinquishment of the Government's right to the future performance of such term or terms, and the Contractor's obligation in respect of such future performance shall continue in full force and effect.

(c) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

§ 18–7.702–12 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.702–13 Security requirements.

SECURITY REQUIREMENTS (MARCH 1963)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates, a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department assigned security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee (if any) shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph. The Contractor may insert in any such subcontract, and any such subcontract entered into thereunder may contain provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee (if any) of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.702–14 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.702–15 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.702–16 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.702–17 Payment for overtime and shift premiums.

Insert the clause set forth in § 18–12.102–3(h)(1).

§ 18–7.702–18 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.702–19 Equal opportunity.

Insert one of the clauses as required by and in accordance with the instructions in § 18–12.802; (a) the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity" clause set forth in § 18–12.802–2.

§ 18–7.702–20 Work Hours Act of 1962—overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.702–21 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.702–22 Supersedure.

SUPERSEDURE (MARCH 1963)

When the acquisition, construction, or installation of the Facilities called for by this contract, or any usable increment thereof, is completed and accepted by the Government, such Facilities shall thereafter be subject to the provisions of a Facilities Use Contract by which the use of such items by the contractor is authorized.

§ 18–7.702–23 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.702–24 Facilities to be provided.

FACILITIES TO BE PROVIDED (MARCH 1963)

(a) The Contractor shall, at Government expense and subject to the terms and conditions of this contract, acquire, construct, or install the Facilities, and perform the work related thereto, described in the Schedule.

(b) The Government shall, subject to the terms and conditions of this contract, furnish to the Contractor the Facilities identified in the Schedule as Government-furnished Facilities. The Contractor shall, at Government expense, perform such work with respect to these Government-furnished Facilities as may be described in the Schedule.

§ 18–7.702–25 Late delivery, diversion, and substitution.

LATE DELIVERY, DIVERSION, AND SUBSTITUTION (MARCH 1963)

(a) The Government shall not be liable to the Contractor for breach of contract by reason of nondelivery or of any delay in the delivery of the Facilities to be furnished by the Government hereunder.

(b) The Government may, if it is determined by the Contracting Officer to be in the best interest of the Government, divert the Facilities by directing:

(i) delivery of any or all of the Facilities acquired by or furnished to the Contractor hereunder to locations other than those specified in the Schedule; and

(ii) assignment, to the Government or to third parties, of purchase orders or subcontracts of the Contractor for any or all of the Facilities hereunder.

§ 18–7.702–26 Changes.

CHANGES (MARCH 1963)

(a) The Contracting Officer may at any time, by written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in the Facilities or work described in the Schedule. Work performed by the Contractor in complying with any such order shall be at Government expense. If any such change causes an increase or decrease in the estimated cost of this contract, in the time required for its performance, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the estimated cost, the completion schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such change.

§ 18–7.702–27 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.702–28 Allowable cost and payment.

ALLOWABLE COST AND PAYMENT (JANUARY 1964)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Part 15, Subpart 5, of the NASA Procurement Regulation as in effect on the date of this contract and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(c) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer or the Contracting Officer's authorized representative, in such form and reasonable detail as such representative may require an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(d) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of paragraph (f) below, make payment thereon as approved by the Contracting Officer.

(e) After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(f) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(g) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all relevant provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (h) below), the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of (i) all work under this contract, or (ii) such work involving acquisition, construction or installation of the Facilities as may then be specified in the Schedule, but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(h) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations and claims arising out of or under this contract, subject only to the following exceptions—

(A) specified claims in stated amounts or in estimated amounts where the amounts

are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release; *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) claims for reimbursement of costs including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

§ 18–7.702–29 Insurance—liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS (MARCH 1963)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance of work at Government expense under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance of work at Government expense under this contract; *Provided,* That the Contractor may with the approval of the Contracting Officer, maintain a self-insurance program, *And provided further,* That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of work at Government expense under this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied, or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of work at Government expense under this contract, whether or not caused by the negligence of the Contractor, his agents, servants, or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer, or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of work at Government expense under this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of work at Government expense under this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, provided such cost would constitute allowable cost under the clause of this contract entitled "Allowable Cost and Payment".

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of work at Government expense under this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however,* That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 18–7.702–30 Stop work orders.

STOP WORK ORDERS (MARCH 1963)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by the Schedule for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall, at Government expense, forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) cancel the Stop Work Order, or

(ii) terminate the work covered by such order as provided in the "Termination of Work" clause of this contract.

(b) If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires the Contractor shall resume work. An equitable adjustment shall be made in the delivery completion schedule, the estimated cost, or both, and the contract shall be modified in writing accordingly, if—

(i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; *provided* that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a Stop Work Order is not canceled and the work covered by such order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.

(d) Appropriate equitable adjustment may be made in any related contract of the Contractor which so provides and which is affected by any Stop Work Order under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits because of a Stop Work Order issued under this clause.

§ 18–7.702–31 Termination of work.

TERMINATION OF WORK (MARCH 1963)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work in performance of the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings,

information, and other property which, if the contract had been completed, would be required to be furnished to the Government;

(vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining any item of reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Part 8, NASA Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1 year period of authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (1)d, as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the teamination and shall pay to the Contractor the amount determined as follows:

(i) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; *Provided, however,* That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) there shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;

(iii) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above the Government shall pay to the Contractor the following:

(i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer;

(ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated, advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(i) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by a Notice of Termination under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits by reason of a Notice of Termination issued pursuant to this clause.

§ 18–7.702–32 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.702–33 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.702–34 License for subsequent use.

Insert the clause set forth in § 18–9.109.

§ 18–7.702–35 Subcontracts.

Insert the clause set forth in § 18–7.203–8.

§ 18–7.702–36 Small business subcontracting program.

SMALL BUSINESS SUBCONTRACTING PROGRAM (MARCH 1963)

(a) The Contractor agrees to establish and conduct a program to afford small business concerns an equitable opportunity to compete for NASA subcontracts within their capabilities. In this connection, the Contractor shall—

(i) designate a small business liaison officer, who will (A) maintain liaison with duly authorized representatives of the Government on small business matters, (B) supervise compliance with the clause of this contract entitled "Utilization of Small Business Concerns," and (C) administer the Contractor's Small Business Program;

(ii) provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions;

(iii) ensure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(iv) maintain records showing (A) whether each prospective subcontractor is a small business concern, and (B) procedures which have been adopted to comply with the policies set forth in this clause;

(v) include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities; and

(vi) submit NASA Form 524 reports, in triplicate, to NASA in accordance with the instructions contained therein.

(b) A "small business concern" is a concern that—

(i) is independently owned and operated, is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees; or

(ii) is certified as a small business concern by the Small Business Administration.

(c) The Contractor further agrees to insert in any subcontract hereunder which is in excess of $1,000,000 and which contains the clause entitled "Utilization of Small Business Concerns" provisions which shall conform substantially to the language of this clause, including this paragraph (c).

§ 18–7.702–37 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 18–7.104–20.

§ 18–7.702–38 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.702–39 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.702–40 Notice to the Government of labor disputes.

Insert the clause set forth in § 18–7.104–4.

§ 18–7.702–41 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.702–42 GSA supply sources.

The clause set forth in § 18–5.907 will be included in contracts in accordance with the instructions set forth therein.

§ 18–7.702–43 Limitation on withholding of payments.

LIMITATION ON WITHHOLDING OF PAYMENTS (MARCH 1963)

If more than one clause or schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or schedule provision at that time: *Provided*, That this limitation shall not apply to:

(i) Withholdings pursuant to any clause relating to wages or hours of employees;

(ii) Withholdings not specifically provided for by this contract; and

(iii) The recovery of overpayments.

§ 18–7.702–44 Utilization of small business concerns.

Insert the clause set forth in § 18–1.707–3(a).

§ 18–7.702–45 Payment of royalties.

In accordance with the instructions in § 18–9.108, insert the appropriate clause set forth therein.

§ 18–7.702–46 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.703 Required clauses for facilities use contracts.

The clauses set forth in this § 18–7.703 shall be inserted in all facilities use contracts.

§ 18–7.703–1 Definitions.

Insert the clause set forth in § 18–7.702–1.

§ 18–7.703–2 Representations and warranties.

Insert the clause set forth in § 18–7.702–2.

§ 18–7.703–3 Inspection.

Insert the clause set forth in § 18–7.702–3.

§ 18–7.703–4 Government bills of lading.

Insert the clause set forth in § 18–7.702–4.

§ 18–7.703–5 Limitation of cost.

Insert the clause set forth in § 18–7.702–5.

§ 18–7.703–6 Records.

Insert the clause set forth in § 18–7.203–7.

§ 18–7.703–7 Title.

Insert the clause set forth in § 18–7.702–7, substituting for paragraph (a) thereof the following paragraph (a):

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out his normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities. (March 1963)

§ 18–7.703–8 Access.

Insert the clause set forth in § 18–7.702–8.

§ 18–7.703–9 Liability for the facilities.

Insert the clause set forth in § 18–7.702–9, substituting for paragraph (a) (iv) thereof the following paragraph (a) (iv):

(a) (iv) A failure, due to willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, or other representatives mentioned in (iii) above, (A), to maintain and administer, in accordance with the clause of the contract entitled "Maintenance", a program for the maintenance, repair, protection, and preservation of the Facilities, or (B) to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities. (March 1963)

§ 18–7.703–10 Indemnification of the Government.

Insert the clause set forth in § 18–7.702–10.

§ 18–7.703–11 Failure to perform.

Insert the clause set forth in § 18–7.702–11, substituting for the first sentence in paragraph (a) thereof the following sentence:

(a) If the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. (March 1963)

§ 18–7.703–12 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.703–13 Security requirements.

Insert the clause set forth in § 18–7.702–13, deleting paragraph (e) of this clause and reletter paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

§ 18–7.703–14 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.703–15 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.703–16 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.703–17 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h)(1).

§ 18–7.703–18 Convict labor.

In accordance with the requirements of § 18–12.201, insert the clause set forth in § 18–12.203.

§ 18–7.703–19 Equal opportunity.

Insert one of the clauses as required by and in accordance with the instructions in § 18–12.802:

(a) the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity" clause set forth in § 18–12.802–2.

§ 18–7.703–20 Work Hours Act of 1962—overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.703–21 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.703–22 Supersedure.

Insert the clause set forth in § 18–7.702–22.

§ 18–7.703–23 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.703–24 Use and charges.

USE AND CHARGES (MARCH 1963)

(a) The Contractor may use the Facilities without charge in the performance of:

(i) Prime contracts with the Government which specifically authorize use without charge;

(ii) Subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract

specifically authorizing such use or has otherwise authorized such use in writing; and

(iii) Other work with respect to which the Contracting Officer has authorized use without charge in writing.

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the Facilities in the performance of work other than that specified in paragraph (a) above, as authorized by the Contracting Officer or as specifically provided in the Schedule. The amount of rentals to be paid for the right to use the Facilities under this paragraph (b) shall be determined in accordance with the following procedure:

(1) The following bases are or shall be established in writing for the rental computation prescribed in subparagraph (2) below in advance of any use of the Facilities under this paragraph:

(i) The rental rates for the right to use the Facilities shall be those set forth in Exhibit A.

(ii) The acquisition cost of the Facilities shall be the total cost to the Government, as determined by the Contracting Officer, of each item of the Facilities, including the costs of transportation and installation, if such costs are borne by the Government. When Government-owned special tooling or accessories are rented with any item of the Facilities, the acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When any item of the Facilities has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization represent. The determination made by the Contracting Officer under this subparagraph shall be final.

(iii) The rental period shall be not less than one month nor more than six months, as may be mutually agreed to.

(iv) For the purpose of computing any credit under subparagraph (2) below, the measurement unit for determining the amount of use of the Facilities by the Contractor shall be direct labor hours, sales, hours of use, or any other measurement unit which will result in an equitable apportionment of the rental charge, as may be mutually agreed to.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to subparagraph (1) above. The rental rates shall be applied to the acquisition cost of the Facilities or such part thereof as may have been authorized for use in advance pursuant to this paragraph (b), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the amount of such rental as would otherwise be properly allocable to work with respect to which the use of the Facilities without charge is authorized in accordance with paragraph (a) above. Such credit shall be computed by multiplying the full rental for the rental period by a fraction whose numerator is the amount of use of the Facilities by the Contractor without charge during such period, and whose denominator is the total amount of use of the Facilities by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer within ninety (90) days after the close of each rental period a written statement of the use made of the Facilities by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time in which to make such submission.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the Facilities to the performance of contracts and subcontracts of NASA, and shall not undertake any work involving the use of the Facilities which would interefere with the performance of existing Government contracts or subcontracts.

(d) Concurrently with the submission of the written statement prescribed by subparagraph (b) (3) above, the Contractor shall pay the rental due the Government under this clause by check made payable to the Treasurer of the United States. Each check shall be mailed or delivered to the Contracting Officer. Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing within six (6) months following such receipt that the amount received is not regarded by the Government as the final amount due.

(e) If the Contractor uses any item of the Facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs. However, the Contracting Officer may waive the Contractor's liability for such unauthorized used if he determines that the Contractor exercised reasonable care to prevent such unauthorized use. In this latter event, the Contractor shall be liable only for the rental that would otherwise be due under this clause. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the Facilities or any other failure to perform this contract according to its terms.

EXHIBIT A

RENTAL RATES

The following rental rates are the rental rates referred to in the clause of this contract entitled "Use and Charges":

1. For land and land preparation, buildings, building installations, and land installations other than those items specified in 2 below, a fair and reasonable rental shall be established, based on sound commercial practice.

2. For machinery and production equipment of the type covered by the following classes of Production Equipment:

Equipment code number	*Description*
PEC/SCC 3191	Dynamometers.
FSC 3411 through 3419	Machine tools.
PEC/SCC 3421 through 3429	Portable machine tools.
PEC/SCC 3431 through 3433 and 3439	Primary metalforming machinery.
FSC 3441 through 3449	Secondary metalforming machinery.
FSC 3431 through 3438	Welding equipment.
PEC/SCC 3521 through 3527 and 3529	Textile machinery.
PEC/SCC 3562 through 3567 and 3569	Woodworking machinery.
PEC/SCC 3571 through 3574, 3575, 3577 through 3579.	Furnaces.
PEC/SCC 3581 through 3587 and 3589	Foundry equipment.
PEC/SCC 3593, 3595 through 3597	Special industries machinery.
PEC/SCC 3598	Special machines for manufacturing ammunition and ordnance.
PEC/SCC 3911 through 3915 and 3919	Crushing, pulverizing, and screening machinery.
PEC/SCC 3991	Miscellaneous general purpose industrial machinery.
PEC/SCC 5631 through 5636 and 5638	Measuring and control instruments.
PEC/SCC 563908	Profilometers.
PEC/SCC 563914	Magnetic particle inspection machines.
PEC/SCC 56391405	Demagnetizers.
PEC/SCC 5651 through 5659	Physical properties testing equipment.
PEC/SCC 5693	Electronic research devices.
PEC/SCC 6814	Industrial X-ray equipment.

NOTE.—PEC/SCC means Production Equipment Classification Codes formerly Standard Commodity Classification Codes. FSC means Federal Stock Classification.

The following rates shall apply:

Age of equipment (years)	*Monthly rental rate (percent)*
0 to 2	1¾
Over 2 to 6	1½
Over 6 to 10	1
Over 10	¾

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on 1 January of each year thereafter. On 1 January following the date of manufacture, the item shall be considered 1 year old, and on each succeeding January 1st it shall become 1 year older. For example, if an item of equipment is manufactured on 15 July 1958, it will be considered to be 1 year old on 1 January 1959, 2 years old on 1 January 1960, 3 years old on 1 January 1961, and so forth. The item of equipment will be considered "over 2 years old" on and after 1 January 1960, "over 6 years old" on and after 1 January 1964, and "over 10 years old" on and after 1 January 1968.

3. For electronic test equipment, and automotive equipment, 25 percent per annum; and

4. For personal property and equipment not covered in 1, 2, or 3 above, a rental shall be established at not less than the prevailing commercial rate, if any, or, in the absence of such rate, not less than 1 percent per month.

§ 18–7.703–25 Costs and payment.

COSTS AND PAYMENT (JANUARY 1964)

(a) In consideration of the use of the Facilities to which the provisions of this contract are applicable, the Contractor shall be

responsible for all duties and obligations assigned to the Contractor hereunder, and shall perform all work called for herein, except that which is specifically designated to be at Government expense, without payment therefor under this contract.

(b) The Contractor shall be obligated to perform the work provided in this contract to be at Government expense, when so directed in writing by the Contracting Officer, to the extent provision is made either in this contract or in other contracts for reimbursement of the allowable costs thereof, without fee or profit; and, accordingly, the "Limitation of Cost" clause of this contract shall be applicable only to provisions for reimbursement, if any, under this contract.

(c) Only those costs may be reimbursed which are determined to be allowable in accordance with (i) Part 15, Subpart 5, of the NASA Procurement Regulation as in effect on the date of this contract, and (ii) the terms of this contract.

(d) The failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost, under any other Government contract or subcontracts, an allocable portion of the costs incurred in performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

§ 18–7.703–26 Location of the facilities.

LOCATION OF THE FACILITIES (MARCH 1963)

The Contractor may use the Facilities at any of the locations specified in the Schedule, and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as he may deem necessary for the protection of the Government's interest in the Facilities involved. Notwithstanding any inconsistency with the provisions of this contract, such terms and conditions shall prevail.

§ 18–7.703–27 Maintenance.

MAINTENANCE (MARCH 1963)

(a) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the Facilities in accordance with sound industrial practice, including protection, preservation, maintenance and repair of the Facilities and, with respect to equipment, normal parts replacement.

(b) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer in writing a proposed normal maintenance program, including an appropriate maintenance records system, in sufficient detail to show its adequacy as a normal maintenance program. To the extent that the Contracting Officer and the Contractor agree upon such a program, it shall become the normal maintenance obligation of the Contractor, and the Contractor shall carry it out in satisfaction of (i) his normal maintenance obligation under paragraph (a) above, and (ii) his obligation to maintain records under paragraph (e) below. To the extent that any such program does not cover any aspect of normal maintenance, the Contractor's general obligation under paragraph (a) above shall apply.

§ 18–7.703–28 Property control.

PROPERTY CONTROL (JANUARY 1964)

The Contractor shall maintain adequate property control procedures and records, and a system of identification of the Facilities, in accordance with the provisions of the applicable "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors" (Appendix C, Armed Services Procurement Regulation, or the "NASA Industrial Property Control Manual" (NPC–105), as may be appropriate), in effect on the date of this contract.

§ 18–7.703–29 Notice of use of the facilities.

NOTICE OF USE OF THE FACILITIES (MARCH 1963)

The Contractor shall notify the Contracting Officer in writing whenever:

(i) Use of the Facilities for Government work is less than seventy-five percent (75%) of the total use of the Facilities,

(ii) A substantial part of the Facilities is no longer needed or usable for the purpose of performing Government contracts or subcontracts.

§ 18–7.730–30 Period of this contract.

PERIOD OF THIS CONTRACT (MARCH 1963)

If not previously terminated pursuant to the "Termination of the Use of the Facilities" clause of this contract, the use of the Facilities authorized under this contract shall terminate five (5) years after its effective date. Thereafter, if continued use of the Facilities by the Contractor is mutually desired, the parties shall enter into a new contract which shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the Facilities hereunder beyond this five (5) year period to permit the completion of then existing related procurement contracts and subcontracts.

§ 18–7.703–31 Termination of the use of the facilities.

TERMINATION OF THE USE OF THE FACILITIES (MARCH 1963)

(a) The Contractor may at any time, upon written notice to the Contracting Officer terminate his authority to use any or all of the Facilities. Termination under this paragraph (a) shall not relieve the Contractor of any of his obligations or liabilities under any related procurement contract or subcontract affected thereby.

(b) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any or all of the Facilities. Except as otherwise provided in the "Failure to Perform" clause of this contract, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such notice.

§ 18–7.703–32 Disposition of the facilities.

DISPOSITION OF THE FACILITIES (MARCH 1963)

(a) Except as the Contracting Officer otherwise directs, or until use of all the facilities under this contract is terminated, the provisions of this clause shall not be applicable to those Facilities, the use of which has been terminated by the Contractor by a notice of termination under paragraph (a) of the "Termination of the Use of the Facilities" clause of this contract if—

(i) such Facilities comprise less than all of the Facilities in the possession of the Contractor, and

(ii) the Contracting Officer determines that continued retention of such Facilities would not interfere with the Contractor's operations.

(b) Within two (2) months after the effective date of any notice of termination given pursuant to the "Termination of the Use of the Facilities" clause of this contract, or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in form satisfactory to him, an accounting for all the Facilities covered by such notice.

(c) Within six (6) months after the Contractor accounts for any Facilities pursuant to paragraph (b) above, the Contracting Officer shall give written notice to the Contractor as to the disposition thereof, except as otherwise provided in paragraph (e) below. In effecting such disposition, the Government may either—

(i) abandon any such Facilities in place, and thereupon all obligations of the Government regarding such abandoned Facilities shall cease; or

(ii) require the Contractor to comply, at Government expense, with such written directions as the Contracting Officer may give with respect to:

(A) the preparation, protection, removal or shipment of the affected Facilities,

(B) the retention or storage of the affected Facilities: *Provided*, That the Contracting Officer will not direct the Contractor to retain or store any items of Facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations,

(C) the restoration of Government-owned land or buildings incident to the removal therefrom of Government-owned Facilities, and

(D) the sale of any affected Facilities in such manner, at such times, and at such price or prices, as may be approved by the Contracting Officer, except that the Contractor shall not be required to extend credit to any purchaser.

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed six (6) month period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere, at the Contractor's plant or in a public insured warehouse, in accordance with sound industrial practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

(e) Nonseverable items of the Facilities or items of the Facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(f) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any Facilities with respect to which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (e) above.

(g) The Contractor shall, within a reasonable time after the expiration of the six (6) month period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

(h) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant which may be damaged by the installation, use, removal, or storage of the Facilities, except any such damage as may be occasioned by the negligence of the Government, its agents, employees, or independent contractors. The Contractor agrees to indemnify the Government against all suits or claims arising out of the Government's

failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any such damage as may be occasioned by the negligence of the Government, its agents, employees, or independent contractors.

§ 18–7.703–33 Property reporting.

PROPERTY REPORTING (JANUARY 1964)

(a) Promptly after the effective date of this contract, the Contractor shall furnish a report of all Facilities for which he is accountable under this contract. The report shall contain the following information:

(i) Real property—total acquisition cost;

(ii) Buildings, structures and improvements—total acquisition cost;

(iii) Plant equipment costing $200 or more per item (excluding electronic test equipment and automotive equipment)—number of items and total acquisition cost;

(iv) Electronic test equipment and automotive equipment—number of items and total acquisition cost;

(v) Other plant equipment costing less than $200 per item—number of items and total acquisition cost; and

(vi) Production equipment—number of items and total acquisition cost of those Facilities in each of the following age categories: 0–2 years; 2–6 years; 6–10 years; and over 10 years of age.

(b) On or before 31 January of the year subsequent to the effective date of this contract, and annually thereafter, during the life of the contract, the Contractor shall submit an up-to-date report, containing the above required information prepared as of 1 January of each such year.

(c) All such reports required pursuant to paragraphs (a) and (b) above shall be signed by the Contractor and submitted to the cognizant Government Property Administrator for verification and forwarding to the Contracting Officer.

(d) In addition to the reports required by paragraphs (a) and (b) above, the Contractor agrees to furnish a current itemized listing of all Government-owned property accountable under this contract, within thirty (30) days of receipt of written request from the Contracting Officer for such a listing.

§ 18–7.703–34 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.704 Required clauses for consolidated facilities contracts.

The clause set forth in this § 18–7.704 shall be inserted in all consolidated facilities contracts.

§ 18–7.704–1 Definitions.

Insert the clause set forth in § 18–7.702–1.

§ 18–7.704–2 Representations and warranties.

Insert the clause set forth in § 18–7.702–2.

§ 18–7.704–3 Inspection.

Insert the clause set forth in § 18–7.702–3.

§ 18–7.704–4 Government bills of lading.

Insert the clause set forth in § 18–7.702–4.

§ 18–7.704–5 Limitation of cost.

Insert the clause set forth in § 18–7.702–5.

§ 18–7.704–6 Records.

Insert the clause set forth in § 18–7.703–7.

§ 18–7.704–7 Title.

Insert the clause set forth in § 18–7.702–7.

§ 18–7.704–8 Access.

Insert the clause set forth in § 18–7.702–8.

§ 18–7.704–9 Liability for the facilities.

Insert the clause set forth in § 18–7.702–9, substituting for paragraph (a) (iv) thereof the following paragraph (a) (iv):

(a) (iv) A failure, due to willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, or other representatives mentioned in (iii) above, (A) to maintain and administer, in accordance with the clause of the contract entitled "Maintenance," a program for the maintenance, repair, protection, and preservation of the Facilities, or (B) to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities. (March 1963)

§ 18–7.704–10 Indemnification of the Government.

Insert the clause set forth in § 18–7.702–10.

§ 18–7.704–11 Failure to perform.

Insert the clause set forth in § 18–7.702–11.

§ 18–7.704–12 Disputes.

Insert the clause set forth in § 18–7.702–12.

§ 18–7.704–13 Security requirements.

Insert the clause set forth in § 18–7.702–13.

§ 18–7.704–14 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.704–15 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.704–16 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.704–17 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h)(1).

§ 18–7.704–18 Convict labor.

In accordance with the requirements of § 18–12.201, insert the clause set forth in § 18–12.203.

§ 18–7.704–19 Equal opportunity.

Insert one of the clauses as required by and in accordance with the instructions in § 18–12.802:

(a) The "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity" clause set forth in § 18–12.802–2.

§ 18–7.704–20 Work Hours Act of 1962—overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.704–21 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.704–22 Supersedure.

Insert the clause set forth in § 18–7.702–22.

§ 18–7.704–23 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.704–24 Facilities to be provided.

Insert the clause set forth in § 18–7.702–24.

§ 18–7.704–25 Late delivery, diversion, and substitution.

Insert the clause set forth in § 18–7.702–25.

§ 18–7.704–26 Changes.

Insert the clause set forth in § 18–7.702–26.

§ 18–7.704–27 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.704–28 Allowable cost and payment.

Insert the clause set forth in § 18–7.702–28.

§ 18–7.704–29 Insurance—liability to third persons.

Insert the clause set forth in § 18–7.702–28.

§ 18–7.704–30 Stop work orders.

Insert the clause set forth in § 18–7.702–30.

§ 18–7.704–31 Termination of work.

Insert the clause set forth in § 18–7.702–31.

§ 18–7.704–32 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.704–33 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.704–34 License for subsequent use.

Insert the clause set forth in § 18–7.702–34.

§ 18–7.704–35 Subcontracts.

The instructions set forth in §18–7.702–35 apply.

§ 18–7.704–36 Small business subcontracting program.

Insert the clause set forth in § 18–7.702–36.

§ 18–7.704–37 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 18–7.104–20.

§ 18–7.704–38 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.704–39 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.704–40 Notice to the Government of labor disputes.

Insert the clause set forth in § 18–7.104–4.

§ 18–7.704–41 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.704–42 GSA supply sources.

The clause set forth in § 18–5.907 will be included in contracts in accordance with the instructions set forth therein.

§ 18–7.704–43 Limitation on withholding of payments.

Insert the clause set forth in § 18–7.702–43.

§ 18–7.704–44 Utilization of small business concerns.

Insert the clause set forth in § 18–1.707–3(a).

§ 18–7.704–45 Payment of royalties.

In accordance with the instructions in § 18–9.108, insert the appropriate clause set forth therein.

§ 18–7.704–46 Use and charges.

Insert the clause set forth in § 18–7.703–24.

§ 18–7.704–47 Location of the facilities.

Insert the clause set forth in § 18–7.703–26.

§ 18–7.704–48 Maintenance.

Insert the clause set forth in § 18–7.703–27.

§ 18–7.704–49 Property control.

Insert the clause set forth in § 18–7.703–28.

§ 18–7.704–50 Notice of use of the facilities.

Insert the clause set forth in § 18–7.703–29.

§ 18–7.704–51 Termination of use of the facilities.

Insert the clause set forth in § 18–7.703–30.

§ 18–7.704–52 Period of this contract.

Insert the clause set forth in § 18–7.703–31.

§ 18–7.704–53 Disposition of the facilities.

Insert the clause set forth in § 18–7.703–32.

§ 18–7.704–54 Property reporting.

Insert the clause set forth in § 18–7.703–33.

§ 18–7.704–55 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.705 Clauses required to be used when applicable.

The clauses set forth in this § 18–7.705 are to be used with the clauses required for use in (a) Facilities Acquisition Contracts (§ 18–7.702), (b) Facilities Use Contracts (§ 18–7.703), and (c) Consolidated Facilities Contracts (§ 18–7.704).

§ 18–7.705–1 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause in § 18–9.203–1.

§ 18–7.705–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.705–3 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.705–4 Contractor and subcontractor cost and pricing data.

Insert the clause set forth in § 18–3.807–4 in all contracts over $100,000 and in all contract modifications over $100,000 even though the original amount of the contract is $100,000 or less.

§ 18–7.705–5 Labor standards for construction work.

Except as provided in §§ 18–12.403–2, 18–12.403–3, and 18–12.403–4, every construction contract shall include the following.

LABOR STANDARDS FOR CONSTRUCTION WORK (JANUARY 1964)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder the Contractor shall, prior to commencing the work, request the determination of the Contracting Officer as to the applicability of the Davis-Bacon and Copeland Acts and shall not perform any of said items hereunder without receipt of such determination.

(b) The Contractor shall, in the performance of items of work so determined to be subject to the Davis-Bacon Act, comply with the following clauses set forth in 12.403–1 of the NASA Procurement Regulation in effect as of the date of this contract:

(i) Davis-Bacon Act (40 U.S.C. 276a–276a–7).

(ii) Apprentices.

(iii) Payroll Records and Payrolls.

(iv) Copeland ("Anti-Kickback") Act—Nonrebate of Wages.

(v) Withholding of Funds to Assure Wage Payment.

(vi) Subcontracts—Termination.

(c) Upon determination that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, the Contractor shall submit a request for a predetermination of the prevailing wage rates to be made applicable to such work. Upon receipt of such request the Contracting Officer shall, as soon as possible, obtain a predetermination of the applicable prevailing wage rates and publish such rates and incidental instructions in numbered exhibits to this contract. Upon publication thereof such exhibits shall be considered the wage determination decision of the Secretary of Labor referred to in paragraph (a) of the "Davis-Bacon Act" clause. Each such exhibit shall indicate to what work the rates set forth therein shall apply, including the period of time within which subcontracts subject to such rates may be issued.

§ 18–7.705–6 Improvements to buildings or land owned by the Government.

Where necessary to assure that Government buildings or land will not be modified in a manner detrimental to the interests of the Government, the following clause shall be inserted.

IMPROVEMENTS TO BUILDINGS OR LAND OWNED BY THE GOVERNMENT (JANUARY 1964)

(a) The Contractor shall not construct or make, at his expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without the prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

§ 18–7.705–7 New technology or property rights in inventions.

In accordance with the requirements of § 18–9.101–2, insert the "New Technology" or "Property Rights in Inventions" clause, as appropriate.

§ 18–7.705–8 Implied licenses.

In accordance with § 18–9.110, insert the clause set forth therein.

§ 18–7.705–9 Changes to make-or-buy program.

In accordance with the requirements of § 18–3.902–1, insert the clause set forth therein.

Subpart 18–7.50—Clauses for Negotiated Utility Service Contracts

§ 18–7.5000 Scope of subpart.

This subpart sets forth uniform contract clauses for use in negotiated utility service contracts as defined in § 18–4.5001.

§ 18–7.5001 Required clauses—contracts for more than $2,500.

Insert the clauses set forth in this § 18–7.5001 in all negotiated utility service contracts which involve an estimated annual cost of more than $2,500, or whenever the negotiated utility service contract form prescribed by § 18–16.501–50(a) is to be used.

§ 18–7.5001–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included, provided they are not inconsistent with such clause or the provisions of these regulations.

§ 18–7.5001–2 Payments.

PAYMENTS (JULY 1963)

(a) Payments for the service rendered under this contract shall be made monthly by the designated disbursing office or officer for the service herein contracted for, under the terms and conditions herein set forth, upon the submission of proper invoices.

(b) All bills shall be paid without penalty or interest and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor.

(c) Invoices for service rendered hereunder shall contain statements of the meter readings at the beginning of the billing period, meter constants, consumption during the billing period, and such other pertinent data as shall be required by the Government.

§ 18–7.5001–3 Assignment of claims.

ASSIGNMENT OF CLAIMS (JULY 1963)

No claim under this contract shall be assigned.

When requested by a prospective contractor and determined by the contracting officer to be in the public interest, the above clause may be deleted and the clause set forth in § 18–7.103–8 shall be included in the contract.

§ 18–7.5001–4 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.5001–5 Equal opportunity.

Insert one or the other of the clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–802–2.

§ 18–7.5001–6 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.5001–7 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.5001–8 Termination.

TERMINATION (JULY 1963)

This contract may be terminated at the option of the Govenment by the giving of not less than thirty (30) days advance written notice of the effective date of termination.

In the foregoing clause the period of 30 days may be varied not to exceed 90 days.

§ 18–7.5001–9 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.5001–10 Rates.

RATES (JULY 1963)

(a) For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid at the rates set out in Appendix A: *Provided*, That the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the billing period in which service is initially furnished thereto, and continuing until this contract is terminated, except that the minimum monthly charge, if any, specified in this contract shall be equitably prorated for the billing periods in which commencement and termination of this contract shall become effective.

(b) The Contractor hereby declares that the rates applicable to the service furnished under this contract are not in excess of the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service.

§ 18–7.5001–11 Public regulation and change of rates.

PUBLIC REGULATION AND CHANGE OF RATES (JULY 1963)

(a) Rates established under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed rate change. If during the term of this contract the public regulatory agency having jurisdiction approves rates that are higher or rates that are lower than those stipulated herein, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in this contract and the Government agrees to pay for such service at the higher or lower rates from and after the date when such rates are made effective. In the event that the regulatory agency promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(b) In the event the Contractor, during the term of this contract, shall make effective any new rate schedule or amended rate schedule applicable to the class of service furnished the Government at the service location, which may contain a lower rate or conditions more favorable to the Government for such class of service, the Contractor shall forward to the Contracting Officer a copy of such rate schedule or amended rate schedule within fifteen (15) days after the effective date thereof, and, upon receipt of written request from the Government, shall substitute such rate schedule or amended rate schedule for the rate schedule then in effect hereunder for such service location, commencing with the billing period in which such written request is received.

§ 18–7.5001–12 Change in class of service.

CHANGE IN CLASS OF SERVICE (JULY 1963)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to such service location at the lowest available rate schedule of the Contractor which is applicable to the class of service furnished following such permanent change subject to the clause hereof entitled "Rates."

(b) Where the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

§ 18–7.5001–13 Contractor's facilities.

CONTRACTOR'S FACILITIES (JULY 1963)

(a) The Contractor, at his expense, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder to, and measure such service as of, the point of delivery specified in the Service Specifications. Title to all such facilities shall be and remain in the Contractor and the Contractor shall be responsible for all loss of or damage to such facilities.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises, all of which facilities shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract, be operated and maintained by the Contractor at his expense; and all taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, or maintenance of such facilities, shall be assumed by the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor with respect to such facilities. Such facilities shall be removed and Government premises restored to their original condition by the Contractor at his expense within a reasonable time after the Government shall revoke the permit or license herein granted and in any event within a reasonable time after termination of this contract, *Provided*, That in the event of termination of this contract due to the fault of the Contractor such facilities may be retained in place at the option of the Government until service comparable to that provided for hereunder is obtained elsewhere. It is expressly understood, however, that proper Governmental authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the national security.

§ 18–7.5001–14 Technical provisions.

TECHNICAL PROVISIONS (JULY 1963)

(a) *Measurement of Service.*

(1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at his expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event any meter fails to register or registers incorrectly the service furnished therethrough, the parties shall agree upon the length of period during which such meter failed to register or registered incorrectly and the quantity of service delivered therethrough during such period and, upon agreement, an appropriate adjustment based thereon shall be made in the Government's bills. For the purpose of the preceding sentence, any meter which registers not more than two (2) percent slow or fast shall be deemed correct.

(ii) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is otherwise prevented from reading the meters on that day, he shall read the meters on the next succeeding business day on which he is able to do so: *Provided*, That all bills based on meter readings of less than twenty-seven (27) days or more than thirty-three (33) days shall be prorated accordingly: *And provided further*, That there shall be not more than twelve (12) billings in any one year.

(b) *Meter Test.* The Contractor, at his expense, shall periodically inspect and test the meters installed by him at intervals not exceeding one (1) year. At the written request of the Contracting Officer the Contractor shall make additional tests of any or all of such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than two (2) percent slow or fast. No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of two (2) percent under normal operating conditions.

(c) *Change in Volume or Character.* Reasonable notice shall, so far as possible, be

given by the Contracting Officer to the Contractor respecting any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of Service and Consumption.*

(i) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages, breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes or other catastrophes, strikes, or failure or breakdown of transmission or other facilities: *Provided,* That when any such failure, suspension, diminution, or variation of service shall aggregate more than ten (10) hours during any billing period hereunder, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(ii) In the event the Government is unable to operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophes, or strikes, an equitable adjustments shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate such service location in whole or in part shall exceed fifteen (15) days during any billing period hereunder.

Minor changes may be made in the above clause when insisted upon by the contractor to conform with established procedure or with procedures contained in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of § 18–4.5006(d) relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of Service.*

(1) The words "billed conjunctively" in the second sentence of paragraph (a)(i) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing as if the bill were prepared for a single meter. This sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively," to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In paragraph (a)(ii), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter Test.*

(1) The first sentence of paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the Contractor's regulated practice.

(2) In the third sentence of paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the contractor's regulated practice.

(c) *Continuity of Service and Consumption.*

(1) In paragraph (d)(i), the adjustment proviso may be deleted or changed, if necessary, to conform with the provisions of the contractor's filed rate schedules. This paragraph may be ended after the word "facilities" and before the word "provided," or the period "ten hours" may be changed.

(2) Paragraph (d)(ii) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand, or similar charges, on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

§ 18–7.5002 Clauses required to be used when applicable.

§ 18–7.5002–1 Federal, State, and local taxes.

In accordance with the requirements of § 18–11.401–2, insert the clause set forth therein.

§ 18–7.5002–2 Work Hours Act of 1962—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the prefatory language required by § 18–12.303–2 for use in contracts with a State or political subdivision thereof.

§ 18–7.5002–3 Examination of records.

Insert the clause in § 18–7.104–15 except where the public utility services are to be furnished at rates not in excess of those established for uniform applicability to the general public or at such rates plus reasonable service or connection charges incident to such utility services.

§ 18–7.5002–4 Approval of contract.

When contractual approval by NASA Headquarters is required by § 18–4.5006, insert the clause set forth in § 18–7.104–51.

§ 18–7.5003 Additional clauses.

The clauses set forth in this § 18–7.5003 will be inserted in negotiated utility service contracts referred to in § 18–7.5001 when it is desired to cover the subject matter thereof. In addition, any other clause authorized by this chapter, in accordance with the instructions pertaining thereto, may be inserted in such contracts when it is necessary or desirable to cover the subject matter contained in such clauses.

§ 18–7.5003–1 Renewal of contract.

It is permissible to provide that a contract may be renewed annually for a number of years upon the execution by the Government of a renewal notice, provided that the number of successive years for which the contract is in effect does not exceed five. In any contract in which it is desirable that the service be provided under the same terms and conditions for a number of years, insert the following clause:

RENEWAL OF CONTRACT (JULY 1963)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least ------ days before this contract is to expire. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ------ years.

In selecting the expiration date to be stated on NASA Form 550, consideration should be given to the selection of a date sufficiently past the end of the fiscal year to assure that appropriations will be available for the renewal period of the contract at the time the renewal notice is issued. The exercise of the option is a new procurement and the contract file shall be documented accordingly. (For guidance, see 32 CFR 1.1505.)

§ 18–7.5003–2 Public regulation and change of rates.

If the rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without recourse to the approval of any Federal, State, or local regulatory agency, or if the service to be furnished under the contract is otherwise not subject to regulation by any Federal, State, or local regulatory agency, or if the contractor also acts as the local public regulatory agency and his decisions are not subject to review by a higher regulatory agency, the following clause will be used in lieu of the clause set forth in § 18–7.5001–11.

CHANGE OF RATES (JULY 1963)

(a) If at any time during the term of this contract either of the parties hereto considers it appropriate that all or part of the rates applicable to the service furnished under this contract be changed, the parties agree to promptly negotiate such rates upon receipt by one party of a written request from the other (i) specifying the rates as to which a change is considered appropriate, (ii) setting forth the proposed change in rates, and (iii) stating in detail the reasons for the proposed change. Any rate changes agreed to by the parties as the result of such negotiations shall be made a part of this contract by the issuance of a supplemental agreement hereto and shall become effective as of the date of the request for a change in rates, unless otherwise agreed to by the parties. Failure of the parties to agree upon the appropriate adjustment of rates, if any, shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor relating to costs which form the basis for the rates.

§ 18–7.5003–3 Connection charge.

When (a) a connection charge is to be paid by the Government and (b) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in (§ 18–16.501–52(a)) do not exist, attach Appendix C required by (§ 18–16.501–52(c)) to the contract, and insert the following clause in the contract:

CONNECTION CHARGE (JULY 1963)

(a) *Charge.* The Government, in consideration of the furnishing and installation by the Contractor at his expense of the New Facilities described in Appendix C, attached hereto and made a part hereof, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum of $------, representing the sum of $------, less the agreed salvage value in the amount of $------, as shown in Appendix C; *Provided,* That, as a condition precedent to final payment, the Contractor shall, if required by the Contracting Officer, execute a release in terms acceptable to the Contracting Officer, of claims

against the Government arising under or by virtue of such installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided hereunder.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at his expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation, or maintenance of such facilities, shall be the obligation of the Contractor.

(c) *Credits.*

(1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the Service Location, a credit of ____ percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time so allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, prior to any termination of this contract but subsequent to completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of such facilities, the corresponding benefit to the Contractor is hereby recognized. It is, therefore, agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under paragraph (c)(1) of this clause to 100 percent of each monthly bill until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service, as agreed upon by the parties hereto, as the portion of the facilities utilized in serving such customer bears to complete facilities described in Appendix C.

(d) *Termination Prior to Completion of Facilities.* The Government reserves the right to terminate this contract at any time prior to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to such facilities.

(e) *Termination Subsequent to Completion of Facilities.*

(1) *Termination by the Government.* In the event the Government terminates this contract subsequent to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge, but prior to the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of such facilities is hereby recognized. It is, therefore, agreed that upon such termination the Contractor shall have the following options:

(A) To retain in place for twelve months or more after the notice of termination by the Government such facilities on condition that (i) if, during such twelve-month period, the Contractor serves any other customer by means of such facilities, the Contractor shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause prior to such termination; (ii) immediately after such twelve-month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(B) To remove such facilities at his own expense within twelve months after the effective date of the termination by the Government: *Provided,* That if the Contractor elects to so remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth in Appendix C hereto: *And provided further,* That the Contractor will, at the request of the Government, leave in place such facilities located on Government property which the Contractor elects to so remove and which the Government elects to purchase at the agreed salvage value.

(2) *Termination by the Contractor.* In the event the Contractor terminates service under, or otherwise defaults in performance of, this contract prior to the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of such termination.

§ 18–7.5003–4 Termination charge.

When a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities, attach Appendix C required by § 18–16.501–52(c) to the contract, and insert the following clause in the contract:

TERMINATION CHARGE (JULY 1963)

In consideration of the furnishing and installation by the Contractor at his expense of the New Facilities described in Appendix C, attached hereto and made a part hereof, the Government shall, in the event of termination of this contract by the Government prior to ____ months from the date on which service commences, pay the Contractor as a termination charge _____ less _____ multiplied by the number of months service has been received prior to the date of such termination.

The length of time, not in excess of 60 months, as negotiated with the contractor will be entered in the first blank. In the second blank enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of cost of facilities furnished and installed by the contractor less the agreed salvage value as shown in § 18–16.501(c). Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to Headquarters approval in accordance with § 18–4.5006(b).

§ 18–7.5003–5 Multiple service locations.

When it is desired to provide for possible alternative service locations, insert the following clause:

MULTIPLE SERVICE LOCATIONS (JULY 1963)

(a) The Contracting Officer may at any time, by written order, designate any service location within the service area of the Contractor at which service shall be furnished or discontinued thereunder, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location, by specifying a different rate if applicable, the appropriate point of delivery, different service specification if applicable, and any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated for the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

§ 18–7.5004 Required clauses—contracts for $2,500 or less annually.

The clauses set forth in this § 18–5004 shall be inserted in all negotiated utility service contracts of $2,500 or less annually whenever the negotiated utility service contract form prescribed by § 18–16.501–51 is to be used.

§ 18–7.5004–1 Definitions.

Insert the clause set forth in § 18–7.103–1.

§ 18–7.5004–2 Payments.

Insert the clause set forth in § 18–7.5001–2.

§ 18–7.5004–3 Assignment of claims.

Insert the clause set forth in § 18–7.5001–3.

§ 18–7.5004–4 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.5004–5 Equal opportunity.

Insert one or the other of the clauses as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–12.802–2.

§ 18–7.5004–6 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.5004–7 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.5004–8 Termination.

Insert the clause set forth in § 18–7.5001–8.

§ 18–7.5004–9 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.5004–10 Rates.

Insert subclause (b) of the clause set forth in § 18–7.5001–10.

§ 18–7.5004–11 Public regulation and change of rates.

Insert the clause set forth in § 18–7.5001–11.

§ 18–7.5004–12 Contractor's facilities.

CONTRACTOR'S FACILITIES (JULY 1963)

The Contractor, at his expense, shall furnish, install, operate, maintain, retain title to, and be responsible for all loss of or damage to all facilities required to furnish the service provided for herein. The Contractor will be allowed access to his facilities on Government premises at suitable times and he shall, at his expense, remove them and restore the premises to original condition within a reasonable time after termination of this contract.

PART 18–8—TERMINATION OF CONTRACTS

Sec.
18–8.000 Scope and applicability of part.

Subpart 18–8.1—Definition of Terms

18–8.101 Definitions.

Subpart 18–8.2—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of all Terminated Cost-Reimbursement Type Contracts

18–8.200 Scope of subpart.
18–8.201 Authority of contracting officers.
18–8.202 Notice of termination.
18–8.203 Methods of settlement.
18–8.204 Duties of prime contractor after receipt of notice of termination.
18–8.205 Duties of contracting officer after issuance of notice of termination.
18–8.205–50 Utilization of services of military departments or of other NASA installations.
18–8.205–51 Procedures for requesting services of military repartments.
18–8.206 Fraud or other criminal conduct.
18–8.207 Audit of prime contract settlement proposals and of subcontract settlements.
18–8.208 Settlement of subcontract claims.
18–8.209 Settlement agreements.
18–8.210 Contracting officer's negotiation memorandum.
18–8.211 Review and approval of proposed settlements.
18–8.211–1 Settlement review boards.
18–8.211–2 Required review and approval.
18–8.211–3 Scope of review.
18–8.211–4 Action by board.
18–8.212 Payment.
18–8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

Subpart 18–8.3—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

18–8.300 Applicability.

Subpart 18–8.4—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

18–8.400 Applicability.

Subpart 18–8.5—Disposition of Termination Inventory

18–8.501 General.
18–8.502 Contractor-acquired property—purchase or retention at cost, or return to suppliers.
18–8.503 Inventory schedules.
18–8.504 Scrap and salvage.
18–8.505 Screening of serviceable and usable property.
18–8.506 Government-furnished property.
18–8.507 Sale or other disposition of termination inventory.
18–8.507–1 General.
18–8.507–2 Competitives sales.
18–8.507–3 Other sales.
18–8.507–4 Proceeds of sale.
18–8.507–5 Applicability of antitrust laws.
18–8.507–6 Foreign contractor inventory.
18–8.508 Donations.
18–8.509 Destruction or abandonment.
18–8.510 Special machinery, tooling, and equipment.
18–8.511 Removal and storage.
18–8.513 Subcontractor termination inventory.
18–8.514 Adjustment prior to final settlement.
18–8.515 Accounting for termination inventory.

Subpart 18–8.6—Termination for Default

18–8.600 Scope of subpart.
18–8.601 General.
18–8.601–50 Utilization of services of Military Departments or of other NASA installations.
18–8.602 Termination of fixed-price supply contracts for default.
18–8.603 Termination of fixed-price construction contracts for default.

Subpart 18–8.7—Clauses

18–8.700 Scope of subpart.
18–8.701 Termination clause for fixed-price contracts.
18–8.702 Termination clause for cost-reimbursement type contracts.
18–8.703 Termination clause for fixed-price construction contracts.
18–8.704 Research and development contracts with nonprofit institutions (including educational institutions).
18–8.704–1 Termination clause.
18–8.704–2 Suggested clause for subcontracts.
18–8.705 Short form termination clauses.
18–8.705–1 Supply and service contracts.
18–8.705–2 Construction contracts.
18–8.705–50 Research contracts with nonprofit institutions (including educational institutions).
18–8.706 Subcontract termination clause.
18–8.707 Default clause for fixed-price supply contracts.
18–8.708 Excusable delays clause for cost-reimbursement type contracts.
18–8.709 Default clause for fixed-price construction contracts.
18–8.710 Default clause for fixed-price research and development contracts.

Subpart 18–8.8—Forms

18–8.800 Applicability.

Subpart 18–8.50—Contract Termination Status Report

18–8.5000 Scope of subpart.
18–8.5001 Responsibility and procedure.

AUTHORITY: The provisions of this Part 18–8 issued under 42 U.S.C. 2473(b)(1).

§ 18–8.000 Scope and applicability of part.

(a) This Part 18–8—

(1) Establishes uniform policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default.

(2) Prescribes uniform contract clauses with respect to termination and excusable delay.

(3) Applies to contracts which by their terms provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination and excusable delay are those prescribed by subpart 18–8.7. (If the clauses actually used in the contract are inconsistent with the provisions of this part, the clauses actually used shall control to the extent of the inconsistency. Contracts which do not contain the applicable clauses may, when it is in the best interest of the Government, be amended by agreement prior to or after termination of the contract, to include or substitute such a clause.)

(4) Applies to the disposal of contractor inventory arising out of any modification of a cost-reimbursement type contract pursuant to the "Changes" clause.

(5) Shall be used in:

(i) The disposal of any property which has become obsolete or excess for any reason under a contract, when the cost of such property is made the basis of a claim by the contractor against the Government; or

(ii) The disposal of contractor inventory generally.

(b) The provisions of to the extent indicated in this Part 18–8 are hereby incorporated by reference as Part 18–8 of this Chapter. References in 32 CFR Part 8, to the Department of Defense or the Military Departments shall be considered as references to "NASA." Where special approvals are required under the provisions of 32 CFR Part 8, the approval of the Director of Procurement, NASA Headquarters is required.

(c) Pursuant to agreements with the Military Departments (see § 18–8.205–50(b)), NASA may request assistance from the Military Departments in performing certain functions of contract administration, including terminations. §§ 18–8.205–50 and 18–8.601–50 establish, for NASA, policy and instructions as to when, and to what extent, the services of the Military Departments shall be requested in the termination of contracts for the convenience of the Government or for default.

Subpart 18–8.1—Definition of Terms

§ 18–8.101 Definitions.

(a) See 32 CFR Part 8, Subpart A for all definitions contained therein except for "plant clearance period" as defined in 32 CFR 8.101–12. References in 32 CFR 8.101–14 and 8.101–23 to 1.201–4 shall be considered as references to 32 CFR 1.208 of this chapter.

(b) "Plant clearance period" means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 180 days after receipt by the contracting officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the contracting officer and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory schedules covering all items of the particular property classified at the plant or location.

Subpart 18–8.2—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 18–8.200 Scope of subpart.

See 32 CFR 8.200.

§ 18–8.201 Authority of contracting officers.

The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this Chapter, is found in the "Termination" clause or other provisions of the contract. Contracts shall be terminated for the convenience of the Government or for default only when such action is in the best interest of the Government. The decisions as to whether to terminate the contract and the type of termination action to be taken shall be made only after a review by cognizant procurement, technical, and legal personnel. Notices of termination shall not be furnished to the contractor until this review has been made.

§ 18–8.202 Notice of termination.

See 32 CFR 8.202.

§ 18–8.203 Methods of settlement.

See 32 CFR 8.203.

§ 18–8.204 Duties of prime contractor after receipt of notice of termination.

See 32 CFR 8.204.

§ 18–8.205 Duties of contracting officer after issuance of notice of termination.

See 32 CFR 8.205 when the NASA contracting officer either of the procurement office which issued the contract or of another NASA procurement office administering the contract is to conduct the entire termination proceedings. However, see § 18–8.205–50 for guidance as to when another NASA installation or one of the Military Departments is to be requested to assist in conducting the termination proceedings.

§ 18–8.205–50 Utilization of services of military departments or of other NASA installations.

(a) *Determination as to how termination proceedings shall be conducted.* After issuing the Notice of Termination (see ASPR 8–200), the NASA contracting officer shall determine, in accordance with the policy set forth in subparagraph (c) below, whether:

(1) To conduct the termination proceedings himself;

(2) To request another NASA installation to conduct all or a part of the termination proceedings; or

(3) To request one of the Military Departments to assist him in conducting the termination proceedings.

(b) *Agreements with the military departments.* NASA has entered into agreements with the Military Departments which provide that these Departments will perform certain functions for NASA in connection with the administration of NASA contracts, including terminations, pursuant to the procedures set forth in those agreements. For the agreement with the Department of the Army, see NASA Management Instruction 2–3–9; with the Department of the Navy, see NASA Management Instruction 2–3–6; and with the Department of the Air Force, see NASA Management Instruction 2–3–4.

(c) *Policy.*

(1) Normally, the NASA contracting officer shall conduct the termination proceedings himself when:

(i) It is determined that the circumstances of the contract being terminated require that the termination proceedings be conducted by the procuring office responsible for issuing the contract; or

(ii) Administration of the contract is not being performed by another NASA installation or a Military Department and the installation of which he is a member is adequately staffed to conduct the termination proceedings.

(2) When another NASA installation is assisting in the administration of the contract, and is adequately staffed and in a position to assist in or conduct the termination proceedings, the contracting officer normally will arrange with the contracting officer of that installation to assist in or conduct the termination proceedings. The contracting officer will delegate to the contracting officer of that installation such authority as is necessary to perform the services requested in connection with the termination proceedings, with any limitations on such authority that are agreed upon.

(3) Except as may be otherwise determined in particular instances, in all other situations not covered by subparagraphs (1) and (2) of this paragraph, it is the policy of NASA to utilize the services of the Military Departments in connection with termination proceedings, including such related functions as plant clearance and audit of settlement proposals and subcontractor settlements. § 18–8.205–51 establishes guidance as to the services to be requested of the Military Departments.

§ 18–8.205–51 Procedures for requesting services of military departments.

(a) When it is determined, in accordance with § 18–8.205–50(c)(3), to utilize the services of one of the Military Departments, a request for such services shall be made by letter prepared in accordance with the agreement with the Military Department concerned (see § 18–8.205–50(b)). The letter shall specify those duties in 32 CFR 8.205, as well as any other duties, which the Military Department is requested to perform, but shall not, without the approval of the Director of Procurement, include the duties listed in 32 CFR 8.205(a) (3) and (4), which are to be reserved for performance by the NASA contracting officer. In addition, the Military Department normally shall be requested to:

(1) Audit the prime contractor's settlement proposal and subcontractor settlements;

(2) Supervise plant clearance of the contractor's plant;

(3) Approve or ratify subcontractor settlements, subject to reviews required by 32 CFR Part 8, and by Part 18–8 of this chapter; and

(4) Dispose of all prime and subcontractor termination inventories, subject to first priority screening by NASA and reviews required by 32 CFR Part 8, and by Part 18–8 and § 18–13.151 of this chapter.

(b) The Military Department also shall be requested to submit the following material to the NASA contracting officer:

(1) The contractor's settlement proposal with recommendations as to whether such proposal should be accepted;

(2) All inventory schedules, as required by 32 CFR 8.503; and

(3) All settlement and property disposal files generated during the termination proceedings.

§ 18–8.206 Fraud or other criminal conduct.

When the contracting officer has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts to the General Counsel, NASA Headquarters, through the Office of Procurement.

§ 18–8.207 Audit of prime contract settlement proposals and of subcontract settlements.

See 32 CFR 8.207.

§ 18–8.208 Settlement of subcontract claims.

For settlement of subcontract claims, see 32 CFR 8.208. References therein to 32 CFR 8.211 and 8.505, and to 32 CFR Part 8, Subpart G, shall be considered as references to §§ 18–8.211 and 18–8.505, and to Subpart 18–8.7, respectively, of this chapter. Reference to 32 CFR Part 8 shall be considered to include reference to Part 18–8 of this chapter.

§ 18–209 Settlement agreements.

See 32 CFR 8.209.

§ 18–8.210 Contracting officer's negotiation memorandum.

See 32 CFR 8.210.

§ 18–8.211 Review and approval of proposed settlements.

§ 18–8.211–1 Settlement review boards.

The Director of Procurement will establish a Settlement Review Board at NASA Headquarters to review proposed settlements as required by § 18–8.211–2(a). The Settlement Review Board (hereinafter referred to as the Board) will be composed of at least three members who are qualified in accounting, business, and contracting fields. One member will be designated to serve as Chairman. Alternate members also will

be designated to serve, when necessary, in the place of regular members. The membership of the Board should include at least one lawyer, one accountant, and one contract specialist, and, in appropriate cases, an engineer or technical specialist. No person shall serve as a member of the Board in reviewing a settlement in which he has participated.

§ 18–8.211–2 Required review and approval.

(a) *When required.* Prior to executing a supplemental agreement, or issuing a determination of the amount due under the "Termination" clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by the Board if:

(1) The settlement or determination involves $50,000 or more (see 32 CFR 8.101–1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and—

(i) In the case of a complete termination, the fee, as adjusted, is $50,000 or more; or

(ii) In the case of a partial termination, the fee as adjusted, with respect to the terminated portion of the contract or subcontract, is $50,000 or more; or

(3) The contracting officer desires review by the Board, in cases other than in (1) and (2) of this section.

(b) *Submission of information.* The contracting officer shall submit directly to the Board a statement of the settlement, supported by such detailed information as is required for an adequate review. This information normally should include copies of the:

(1) Contractor's or subcontractor's settlement proposal;

(2) Audit report;

(3) Property disposal report and any required approvals in connection therewith; and

(4) Contracting officer's memorandum explaining the settlement (see 32 CFR 8.210).

The Board may, at its discretion, require the submission of additional information.

§ 18–8.211–3 Scope of review.

The function of the Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest.

§ 18–8.211–4 Action by board.

The Board shall submit to the contracting officer a written opinion with respect to the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof, or other decision thereon, signed by each Board member present. Failure of the Board to submit a written opinion as to any proposal settlement agreement or determination within 30 days after receipt by the Board of all the information required pursuant to § 18–8.211–2(b) shall operate as an approval by the Board.

§ 18–8.212 Payment.

See 32 CFR 8.212.

§ 18–8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

See 32 CFR 8.213.

Subpart 18–8.3—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

§ 18–8.300 Applicability.

For this Subpart 18–8.3, see 32 CFR Part 8, Subpart C. References therein to 32 CFR 8.701 and 8.703 shall be considered as references to §§ 18–8.701 and 18–8.703 of this Chapter, respectively.

Subpart 18–8.4—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

§ 18–8.400 Applicability.

For this Subpart 18–8.4, see 32 CFR Part 8, Subpart D. References therein to 32 CFR 8.702, 8.704, and 7.203–5 shall be considered as references to §§ 18–8.702, 18–8.704, and 18–7.203–5 of this Chapter, respectively.

Subpart 18–8.5—Disposition of Termination Inventory

§ 18–8.501 General.

See 32 CFR 8.501. The reference therein to 32 CFR Part 8, Subpart E shall be considered to include a reference to Subpart 18–8.5 of this chapter.

§ 18–8.502 Contractor-acquired property—purchase or retention at cost, or return to suppliers.

See 32 CFR 8.502.

§ 18–8.503 Inventory schedules.

See 32 CFR 8.503. The reference in 32 CFR 8.503–7(b)(1) to 8.101–12 shall be considered as a reference to § 18–8.101(b) of this chapter.

§ 18–8.504 Scrap and salvage.

See 32 CFR 8.504. References therein to 32 CFR 8.505–3 and 8.509 shall be considered as references to §§ 18–8.505 and 18–8.509 of this chapter, respectively, and the reference therein to 32 CFR 8.507 shall be considered to include a reference to § 18–8.507.

§ 18–8.505 Screening of serviceable and usable property.

NASA contracting officers shall submit all termination inventory schedules to the cognizant NASA property officer for screening and utilization in accordance with NASA Management Instruction 20–4–2.

§ 18–8.506 Government-furnished property.

Government-furnished property included in termination inventory, return of which has not been required by the Government, may be disposed of in the same manner as other termination inventory after screening in accordance with the requirements of NASA Management Instruction 20–4–2. The contracting officer is required to approve all such dispositions and may specify methods for preparing and routing inventory schedules covering such property.

§ 18–8.507 Sale or other disposition of termination inventory.

§ 18–8.507–1 General.

See 32 CFR 8.507–1. References therein to 32 CFR 8.505–3 and 8.512 shall be considered as references to §§ 18–8.505 and 18–8.512 of this Chapter, respectively.

§ 18–8.507–2 Competitives sales.

See 32 CFR 8.507–4.

§ 18–8.507–3 Other sales.

See 32 CFR 8.507–4.

§ 18–8.507–4 Proceeds of sale.

See 32 CFR 8–507–4.

§ 18–8.507–5 Applicability of antitrust laws.

(a) When any termination inventory which has or may cost the Government $3,000,000 or more is to be sold or otherwise disposed of to private interests, the National Aeronautics and Space Administration is required to promptly notify the Attorney General and the Administrator of General Services of the proposed disposal and the probable terms or conditions thereof, and await advice from the Attorney General as to whether, so far as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws.

(b) Pursuant to the paragraph (a) of this section, when property with a total acquisition cost of $3,000,000 or more is offered for sale by a competitive bid, a provision comparable to the following statement shall be included in the invitation for bids:

If, under this invitation, a bidder is the successful bidder on property with a total acquisition cost of $3,000,000 or more, the award shall be subject to a determination by the Attorney General that the award will not be inconsistent with the antitrust laws.

(c) In a negotiated sale of property with a total acquisition cost of $3,000,000 or more, the prospective purchaser shall be informed that final consummation of the sale is subject to a determination by the Attorney General that the sale would not be inconsistent with the antitrust laws.

(d) The contracting officer shall, after ascertaining the prospective purchaser, forward the following information, in triplicate, to the Office of Administration, NASA Headquarters, (Code BD):

(1) With respect to the prospective purchaser—

(i) Full name and address;

(ii) If a corporation, State and date of incorporation;

(iii) If a partnership, name and address of partners, and date when organized;

(iv) Name and address of affiliates, if any;
(v) Nature of business (products produced or handled);
(vi) Geographical area of operations;
(vii) Dollar sales volume for latest calendar or fiscal year;
(viii) Net worth; and
(ix) Intended use of property.
(2) Other data—
(i) Location and brief description of the property covered by the proposed disposition;
(ii) Acquisition cost to the Government of the property;
(iii) If the property is scrap, the tonnage;
(iv) If the proposed disposition is by competitive bids, the invitation number, the number of bids solicited, and the number of bids received; and
(v) If the proposed disposition is by negotiation, the extent of competition obtained, and the amount to be paid by and other consideration to be received from, the prospective purchaser for the property.

(e) The Office of Administration, NASA Headquarters, shall forward the information received to the Attorney General, Department of Justice, Attention: Antitrust Division; and the Administrator of General Services. The Attorney General has agreed to advise both the Administrator of General Services and the Administrator, NASA, within a reasonable period of time, in no event to exceed 60 days after receipt of such information whether, so far as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. Before consummating the sale, the contracting officer shall await notification from the Office of Administration, NASA Headquarters, that the Attorney General has determined that the sale is not inconsistent with the antitrust laws.

§ 18–8.507–6 Foreign contractor inventory.

See 32 CFR 8.507–6.

§ 18–508 Donations.

See NASA Management Instruction 20–4–4.

§ 18–8.509 Destruction or abandonment.

See NASA Management Instruction 20–4–4.

§ 18–8.510 Special machinery, tooling, and equipment.

See 32 CFR 8.510.

§ 18–8.511 Removal and storage.

See 32 CFR 8.511.

§ 18–8.513 Subcontractor termination inventory.

For subcontractor termination inventory, see 32 CFR 8.513. References therein to 32 CFR as shown in the following table shall be considered as references to the corresponding section of this chapter as follows:

32 CFR	§ 18–
8.505	8.505
8.506	8.506
8.508	8.508
8.509	8.509
8.512	8.512

§ 18–8.514 Adjustment prior to final settlement.

See 32 CFR 8.514.

§ 18–8.515 Accounting for termination inventory.

For accounting for termination inventory, see 32 CFR 8.515. References therein to 32 CFR 8.505–3, 8.508 and 8.509 shall be considered as references to §§ 18–8.505, 18–8.508, and 18–8.509 of this chapter, respectively.

Subpart 18–8.6—Termination for Default

§ 18–8.600 Scope of subpart.

This Subpart 18–8.6 sets forth policies and procedures for the use and application of the "Default" clause prescribed in § 18–8.707 for fixed-price supply contracts, and the "Termination for Default—Damages for Delay—Time Extensions" clauses prescribed in § 18–8.709 for fixed-price construction contracts. (For cost-reimbursement type contracts, see 32 CFR 8.407.)

§ 18–8.601 General.

See 32 CFR 8.601. References therein to 32 CFR 8.707 and 8.709 shall be considered as references to §§ 18–8.707 and 18–8.709 of this chapter, respectively.

§ 18–8.601–50 Utilization of services of Military Departments or of other NASA installations.

(a) It is the general policy of NASA that when a fixed-price type contract is to be terminated for default, the contracting officer of the NASA installation responsible for issuing the contract normally shall accomplish the termination for default. However, another NASA installation or one of the Military Departments may be requested to assist in the termination for default when it is considered to be economical and practicable.

(b) When it is proposed to utilize the services of another NASA installation, the contracting officer shall arrange with the contracting officer of that installation to perform those duties that are appropriate.

(c) When it is proposed to utilize the services of one of the Military Departments, a request for such services shall be made by letter prepared in accordance with the agreement with the Military Department concerned (see § 18–8.205–50(b)).

§ 18–8.602 Termination of fixed-price supply contracts for default.

See 32 CFR 8.602. References therein to 32 CFR 8.707, 3.201 through 3.217, and 7–105.5 shall be considered as references to §§ 18–8.707, 18–3.201 through 18–3.217, and 18–7.101–4(b) of this chapter, respectively.

§ 18–8.603 Termination of fixed-price construction contracts for default.

See 32 CFR 8.603. The reference therein to 32 CFR 8.709 shall be considered as a reference to § 18–8.709 of this chapter.

Subpart 18–8.7—Clauses

§ 18–8.700 Scope of subpart.

This Subpart 18–8.7 sets forth the contract clauses that are used in the termination of contracts for the convenience of the Government and for default.

§ 18–8.701 Termination clause for fixed-price contracts.

(a) *General.* Except as otherwise required by paragraph (b) of this section and by § 18–8.705–1, the following clause shall be used in any long-form fixed-price type contract, in excess of $2,500, for supplies or experimental, developmental, or research work other than (1) construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, or (2) experimental, developmental or research work with educational or other nonprofit institutions, where no profit is contemplated.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (JANUARY 1964)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not

be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Part 8, NASA Procurement Regulation as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (1) year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(i) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (i) hereof;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) a sum, as a profit, equal to 2 percent of that part of the amount determined under (A) above: *Provided, however,* That if it cles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above; *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (i) and (ii) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Part 15, Subpart 2, of the NASA Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as de-

termined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(b) *Fixed-price type letter contracts.* In accordance with the requirements of § 18–16.550–3, the following clause shall be included in letter contracts which are expected to be converted to fixed-price type definitive contracts.

TERMINATION (JANUARY 1964)

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Letter Contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;

(vi) Transfer title and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government;

(vii) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Letter Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in the NASA Procurement Regulation, Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusively of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (1) year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulations in effect on the date of the execution of this Letter Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum amount specified in Article IIIa of the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract, and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e), as to the amount or amounts to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the NASA Procurement Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) hereof, no allowance for profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination or the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(i) If there is no right or appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or

(ii) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted:

(i) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(ii) Any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(iii) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting

Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) Unless otherwise provided in this Letter Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this Letter Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, without direct charge to the Government, all his books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this Letter Contract and relating to the work terminated hereunder or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 18–8.702 Termination clause for cost-reimbursement type contracts.

(a) *General.* Except as otherwise required by paragraph (b) of this section, the following clause shall be used in any long form cost-reimbursement type contract for supplies and experimental, developmental, or research work other than (1) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property; or (2) experimental, developmental, or research work with educational or other nonprofit institutions, where no fee is contemplated.

TERMINATION (SEPTEMBER 1962)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(i) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) Transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Part 8, NASA Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (1) year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) If the settlement includes cost and fee—

(A) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however,* That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) there shall be included therein, so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;

(C) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however,* That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) there shall be included therein a portion of the fee payable under the contract determined as follows—

(I) in the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) in the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(b) *Cost-reimbursement type letter contracts.* In accordance with the requirements of § 18–16.550–2, the following clause shall be included in letter contracts which are expected to be converted to cost-reimbursement type definitive contracts:

TERMINATION (JANUARY 1964)

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(i) Whenever the Contractor shall default in performance of this Letter Contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Letter Contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i) above, or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this Letter Contract relating to excusable delays, the Notice of Termination shall be considered to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer the Contractor shall:

(i) Stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Letter Contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Letter Contract;

(vi) Transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times, directed by the Contracting Officer, deliver to the Government: (A) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (B) The completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government; and (C) The jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Letter Contract for the cost of which the Contractor has been or will be reimbursed under this Letter Contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property un-

der the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Letter Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining the amount of any items of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Part 8, NASA Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (1) year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulations in effect on the date of the execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) or (b)(i) hereof, such amount or amounts shall not include any allowance for fee. In the event of any termination pursuant to paragraph (b)(ii) hereof, such amount or amounts may include a reasonable allowance for fee, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum amount specified in Article IIIa of the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e) above, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the NASA Procurement Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) or (b)(i) hereof, no allowance for fee shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) or (b)(i) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or

(ii) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted:

(i) All unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(ii) Any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(iii) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

§ 18–8.703 Termination clause for fixed-price construction contracts.

The following clause shall be used in any fixed-price type construction contract in excess of $10,000.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (JANUARY 1964)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer—

(A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and

(B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor—

(A) shall not be required to extend credit to any purchaser, and

(B) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period as defined in Part 8, NASA Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (1) year period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(i) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) the cost of such work;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above, and

(C) a sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles or materials delivered to the site but not incorporated in the work in place on the effective date of the Notice of Termination, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for purposes of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Part 15, Subpart 4 of the NASA Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following:

(i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or

(ii) If an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted:

(i) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract;

(ii) Any claim which the Government may have against the Contractor in connection with this contract; and

(iii) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date when such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later

date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 18–8.704 Research and development contracts with nonprofit institutions (including educational institutions).

§ 18–8.704–1 Termination clause.

Except as otherwise required by § 18–8.705–50, the following clause shall be used in any contract for experimental, developmental, or research work (whether fixed-price or cost-reimbursement type) with a nonprofit institution: *Provided,* That such contract is placed on a no-profit or no-fee basis.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (JANUARY 1964)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments, the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract, except that if the Contractor is not an educational institution the determination shall be governed by Part 15, Subpart 2, thereof.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by NASA Regulations in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided,* That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning thirty (30) days from the date of such demand.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) Completed or partially completed plans, drawings, and information; and

(ii) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

§ 18–8.704–2 Suggested clause for subcontracts.

The clause set forth in § 18–8.704–1, suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with nonprofit institutions: *Provided,* That such subcontracts with educational institutions incorporate, or are negotiated on the basis of the cost principles set forth in Subpart 18–15.3 of this Chapter: *And provided further,* That such subcontracts are placed on a no-fee or no-profit basis.

§ 18–8.705 Short form termination clauses.

§ 18–8.705–1 Supply and service contracts.

The following clause is authorized for use in any fixed-price type supply contract not in excess of $10,000 and in any fixed-price contract for services (other than experimental, developmental, or research work) where it is intended that a termination claim will not be made in the event of termination for the convenience of the Government: *Provided,* That such contract obligates the Government to order or otherwise be liable for a minimum quantity.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SEPTEMBER 1962)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with Part 8 of the NASA Procurement Regulation and Section VIII of the Armed Services Procurement Regulation in effect on the date of this contract. To the extent that this contract is for services and is terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

§ 18–8.705–2 Construction contracts.

Generally, there is no need for a termination clause in construction contracts not in excess of $10,000. However, where the contracting officer determines that a termination clause should be included in such a contract, the following clause shall be used.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SEPTEMBER 1962)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is terminated, the Contractor shall be compensated in accordance with Part 8 of the NASA Procurement Regulation and Section VIII of the Armed Services Procurement Regulation in effect on the date of this contract.

§ 18–8.705–50 Research contracts with nonprofit institutions (including educational institutions).

(a) *Fixed-price type.* The following clause shall be used in any short form fixed-price research contract with a nonprofit institution.

TERMINATION AT THE OPTION OF THE GOVERNMENT (SEPTEMBER 1962)

The performance of work under this contract may be terminated by the Government, in whole or in part, whenever the Contracting Officer shall determine that such action is in the best interest of the Government. If this contract is so terminated, fair compensation for work performed will be provided the Contractor.

(b) *Cost - reimbursement type.* The following clause shall be used in any short form cost-reimbursement type research contract with a nonprofit institution.

TERMINATION (JANUARY 1964)

The performance of work under this contract may be terminated in whole or in part by the Government whenever the Contracting Officer shall determine that such action is in the best interests of the Government. Such termination shall be effected by written notice to the Contractor describing the extent of the termination and the date upon which it becomes effective. Upon receipt of such notice, the Contractor shall take necessary action to cancel outstanding subcontracts and/or purchase orders and any other commitment relating to costs which would be chargeable to this contract; and shall exercise reasonable diligence to cancel or direct commitments for personal services to his other activities and operations. The Contractor shall submit a termination claim to the Contracting Officer as promptly as possible after receipt of the notice of termination, describing in detail those commitments which will involve costs incident to cancellation. The Contractor and the Contracting Officer shall agree on the amounts to be paid as a result of a termination under this clause, and such agreement shall be evidenced by a supplemental agreement to this contract. Payment of the Contractor's termination claim shall be governed by the cost principles set forth in Part 15, Subpart 3, of the NASA procurement Regulation, except that if the Contractor is not an educational institution, payment shall be governed by Part 15, Subpart 2 thereof.

§ 18–8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (SEPTEMBER 1962)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(iv) Assign to the buyer, in the manner, and to the extent directed by the buyer, all of the right, title, and interest of his seller under the orders of subcontracts so terminated;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the buyer in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(vii) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (vi) above: *Provided, however,* That the seller (A) shall not be required to extend credit to any purchaser and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(viii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary or as the buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer, but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the seller the following amounts:

(i) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) In respect of the work terminated as permitted by this clause, the total (without duplication of any item) of—

(A) the cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid to or to be paid for under (i) above; and

(B) the cost of settling and paying claims arising out of the termination work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) a sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles and materials not processed by the seller, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sum shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for the purpose of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however,* That if it appears that the seller would have sustainted a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C), and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii)(A) above the fair value, as determined by the buyer, of property which is destroyed, lost, stolen, or dam-

aged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b)(vii).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Part 8 of the NASA Procurement Regulation and Section VIII of the Armed Services Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of three years after final settlement under the contract, shall make available to the buyer and the Government at all reasonable times at the office of the seller all his books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

§ 18–8.707 Default clause for fixed-price supply contracts.

The following clause shall be included in all formally advertised fixed-price type supply contracts and in all negotiated fixed-price type supply contracts in excess of $2,500.

DEFAULT (SEPTEMBER 1962)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided,* That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If this contract contains a clause providing for termination for convenience of the Government and if, after notice of termination of the contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this contract providing for termination for convenience of the Government. If this contract does not contain such a clause and if, after notice of termination of the contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the contract shall be equitably adjusted to compensate for such termination, and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 18–8.708 Excusable delays clause for cost-reimbursement type contracts.

The following clause shall be used in all cost-reimbursement type contracts that contain the "Termination" clause in § 18.8.702 (a) or (b), and may be used in contracts containing the clause set forth in § 18–8.704–1.

EXCUSABLE DELAYS (SEPTEMBER 1962)

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or

more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause of this contract providing for termination.

§ 18–8.709 Default clause for fixed-price construction contracts.

(a) The following clause shall be used in all fixed-price construction contracts in excess of $10,000.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (SEPTEMBER 1962)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(i) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(ii) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the clause of this contract entitled "Disputes."

(e) If this contract contains a clause providing for termination for convenience of the Government and if, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause providing for termination for convenience of the Government. If this contract does not contain such a clause, and if, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(b) During a period of national emergency, paragraph (d)(i) of the clause set forth in paragraph (a) of this section shall be amended by deleting the words "unforeseeable causes" in the two places where they appear and substituting the words "causes, other than normal weather." Where Standard Form 23A is used, the words "the clause of this contract entitled Disputes" in paragraph (d) of the clause set forth in paragraph (a) of this section need not be substituted for "Clause 6 of these General Provisions."

(c) The following clause shall be used in all fixed-priced construction contracts not in excess of $10,000.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (SEPTEMBER 1962)

(a) If the Contractor does not prosecute the work so as to insure completion, or fails to complete it, within the time specified, the Government may, by written notice to the Contractor, terminate his right to proceed. Thereafter, the Government may have the work completed, and the Contractor shall be liable for any resulting excess cost to the Government. If the Government does not terminate the Contractor's right to proceed, he shall continue the work and shall be liable to the Government for any actual damages occasioned by such delay unless liquidated damages are stipulated.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with actual or liquidated damages under (a) above because of any delays in completion of the work due to causes other than normal weather, beyond his control and without his fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government (in either its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to causes beyond their control and without their fault or negligence: *Provided,* That the Contractor shall, within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties hereto, subject only to appeal as provided in the clause of this contract entitled "Disputes."

(d) When Standard Form 19 is used, the words "the clause of this contract entitled Disputes" in paragraph (b) of the clause set forth in paragraph (c) of this section need not be substituted for "Clause 3 hereof."

§ 18–8.710 Default clause for fixed-price research and development contracts.

The following clause shall be used in all fixed-price research and development contracts as defined in § 18–7.301, except contracts with nonprofit institutions (including educational institutions) which are awarded on the basis of no profit.

DEFAULT (SEPTEMBER 1962)

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided,* That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the

Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government, and (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If this contract contains a clause providing for termination for convenience of the Government, and if, after notice of termination of the contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this contract providing for termination for convenience of the Government. If this contract does not contain such a clause and if, after notice of termination of the contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Subpart 18–8.8—Forms

§ 18–8.800 Applicability.

See 32 CFR Part 8, Subpart H.

Subpart 18–8.50—Contract Termination Status Report

§ 18–8.5000 Scope of subpart.

This Subpart 18–8.50 prescribes the preparation and submission of monthly reports indicating the status of fixed-price type contracts terminated for convenience and all terminated cost-reimbursement type contracts.

§ 18–8.5001 Responsibility and procedure.

NASA contracting officers responsible for issuing the notice of termination shall prepare and submit the Monthly Contract Termination Status Report, in duplicate, to the Director of Procurement. The report shall be prepared for each fixed-price type contract terminated for convenience and for each terminated cost-reimbursement type contract at the end of the month in which such contract is terminated and at the end of each month thereafter until a final closing report is submitted. Such report shall be prepared in accordance with the format and instructions set forth in paragraphs (a) and (b) of this section.

(a) *Monthly contract termination status report.*

MONTHLY CONTRACT TERMINATION STATUS REPORT

1. Contract Number _____ Date: _____
2. Procurement Office _____
3. Contractor _____
4. Agency or Installation Conducting Termination _____
5. Date of Termination _____

MONTHLY CONTRACT TERMINATION STATUS REPORT—Continued

6. Type of Termination _____ (Partial) (Complete)
7. Contract Amount _____ $_____
8. Contract Price of Items Terminated (If Partial Termination) _____ $_____
9. Type of Contract _____
10. Amount of Contractor's Settlement Proposal _____ $_____
11. Date Settlement Proposal Submitted _____
12. Date Audit Requested _____
13. Date Audit Report Received _____
14. Date Final Settlement Negotiated _____
15. Net Settlement Cost _____
16. Date Settlement Submitted to Review Board _____
17. Date Settlement Supplemental Agreement Submitted to Contractor _____
18. If Cost-Reimbursement Type Contract: Contractor Vouchering Out Remaining Cost _____ (Yes) (No)
GAO Audit Status Date Established _____
19. Number of Subcontract Claims Submitted and Approved _____
20. Amount of Subcontract Claims Submitted and Approved _____ $_____
21. Prime Contractor Termination Inventory Received _____ (Date) _____ $_____
22. Date Prime Contractor Termination Inventory Cleared _____
23. Remarks: _____

_____ (Contracting Officer)

(b) *Instructions for the preparation of the monthly contract termination status report.* The Monthly Contract Status Report shall be prepared in accordance with the following instructions:

Item	*Explanation*
1. Contract Number	Enter the basic contract number.
2. Procurement Office	Enter sufficient detail to establish the identity and address of procurement office submitting the report.
3. Contractor	Enter the complete name and address of the contractor as it appears on the contract.
4. Agency or Installation Conducting Termination.	Enter the name and address of the Military Department or other NASA installation, if the termination proceedings have been delegated to a Military Department or another NASA installation.
5. Date of Termination	Enter the month, day, and year the contract is actually terminated.
6. Type of Termination	Indicate whether partial or complete termination by deleting appropriate word.
7. Contract Amount	Enter the total amount of funds obligated by the contract.
8. Contract Price of Items Terminated (If Partial Termination).	Enter the total amount of those items terminated if action is a partial termination of the contract.
9. Type of Contract	Enter whether fixed-price type contract (indicating whether escalation, redetermination, or incentive, and type thereof); cost-reimbursement type contract (indicating whether cost, cost-plus-a-fixed-fee, or cost-plus-incentive-fee contract); time and materials contract; labor-hour contract; letter contract; or other type.
10. Amount of Contractor's Settlement Proposal.	Enter total amount of the contractor's termination claim.
11. Date Settlement Proposal Submitted.	Enter the month, day, and year the contractor submits his settlement proposal.

Item	Explanation
12. Date Audit Requested	Enter the month, day, and year the contractor's settlement proposal is submitted to the cognizant audit agency for examination.
13. Date Audit Report Received	Enter the month, day, and year the comments and recommendations of the audit agency are received.
14. Date Final Settlement Negotiated.	Enter the month, day, and year a final settlement agreement is negotiated with the contractor.
15. Net Settlement Cost	Enter the total amount of the settlement negotiated with the contractor.
16. Date Settlement Submitted to Review Board.	Enter the month, day, and year the settlement agreement is submitted to the Settlement Review Board at NASA Headquarters for review.
17. Date Settlement Supplemental Agreement Submitted to Contractor.	Enter the month, day, and year the settlement agreement is submitted to the contractor for signature.
18. If Cost-Reimbursement Type Contract.	Indicate whether contractor elects to continue to submit vouchers for reimbursement of costs by deleting appropriate word. If contractor does not elect to continue to submit vouchers for reimbursement of costs, enter the month, day, and year the "Audit Status Date" is established.
19. Number of Subcontractor Claims Submitted and Approved.	Enter the total number of all subcontractor claims that were submitted and subsequently approved.
20. Amount of Subcontractor Claims Submitted and Approved.	Enter the total amount of all subcontractor claims submitted and subsequently approved.
21. Prime Contractor Termination inventory received.	Enter the month, day, and year the contractor's final termination inventory schedule is received and the total dollar value of all termination inventory.
22. Date Prime Contractor Termination Inventory Cleared.	Enter the month, day, and year of the final disposal action of the contractor's termination inventory.
23. Remarks	Enter any other data to explain further the information furnished under the above items.

PART 18–9—PATENTS, DATA, AND COPYRIGHTS

Sec.
18–9.000 Scope of part.

Subpart 18–9.1—Innovations, Inventions, and Patents

18–9.100 Scope of subpart.
18–9.101 Property rights in inventions made in the performance of work under NASA contracts.
18–9.101–1 General.
18–9.101–2 Use of new technology and property rights in inventions clause.
18–9.101–3 Special instructions for waived inventions.
18–9.101–4 "New technology" clause.
18–9.101–5 Property rights in inventions clause.
18–9.101–6 Contracts relating to atomic energy.
18–9.101–7 Patent rights under product improvement programs or independent research and development programs.
18–9.102 Reserved.
18–9.103 Authorization and consent.
18–9.104 Patent indemnification of government by contractor.
18–9.105 Notice and assistance.
18–9.106 Processing of infringement claims.
18–9.107 Classified contracts.
18–9.108 Payment of royalties.
18–9.108–1 Payment of royalties—standard clause.
18–9.108–2 Payment of royalties—manufacturers aircraft association deviation.
18–9.109 Facilities license.
18–9.110 Proposals of equivalent merit.
18–9.150 Designation of representatives for new technology and for patents.
18–9.151 Contract review.
18–9.152 Contract clearance.
18–9.153 Consultation with patent representative.
18–9.154 Sample designation letters.

Subpart 18–9.2—Data and Copyrights

18–9.200 Scope of subpart.
18–9.201 Definitions.
18–9.202 Acquisition and use of data.
18–9.202–1 Acquisition of data.
18–9.202–2 Use of data.
18–9.202–3 Reserved.
18–9.202–4 Reserved.
18–9.202–5 Reserved.
18–9.202–6 Data furnished on a restricted basis in support of a proposal.
18–9.203 Rights in data clauses.
18–9.203–1 Rights in data clause for use in contracts for experimental, developmental, or research work.
18–9.203–2 Rights in data clause for use in supply contracts.
18–9.203–3 Limited rights in data provision for use in supply contracts.
18–9.204 Contract clauses—special.
18–9.204–1 Reserved.
18–9.204–2 Production of motion pictures.
18–9.204–3 Histories and other works.
18–9.204–50 Short form clause, fixed-price, research contract with nonprofit institutions (including educational institutions).
18–9.204–51 Short form clause, cost-reimbursement, research contract with nonprofit institutions (including educational institutions).
18–9.205 Contracts for acquisition of existing works.
18–9.205–1 Off-the-shelf purchase of books and similar items.
18–9.205–2 Contracts for existing motion pictures.
18–9.206 Contracts to be performed outside the United States.

AUTHORITY: The provision of this Part 18–9 issued under 42 U.S.C. 2473(b)(1).

§ 18–9.000 Scope of part.

This part sets forth policies and procedures pertaining to innovations, inventions, patents, data, and copyrights in connection with the procurement of supplies and services.

Subpart 18–9.1—Innovations, Inventions, and Patents

§ 18–9.100 Scope of subpart.

(a) This subpart prescribes contract clauses and instructions which define and implement the policy of NASA with respect to:

(1) Inventions and innovations made in the performance of work under contract with NASA;

(2) Patent and copyright infringement liability of the United States resulting from work performed under contract with NASA;

(3) Security requirements covering patent applications containing classified subject matter; and

(4) Patent and copyright royalties payable in connection with the performance of contracts with NASA.

(b) The Office of General Counsel, NASA Headquarters, should be consulted for policies, instructions, and contract

clauses concerning innovations, inventions, patents, data, and copyrights for use in contracts which are to be performed outside the United States, its possessions, and Puerto Rico.

§ 18–9.101 Property rights in inventions made in the performance of work under NASA contracts.

§ 18–9.101–1 General.

(a) Except for any invention made in the performance of any work under any contract with NASA, it is the policy of NASA to pay reasonable compensation for the acquisition of rights in any invention covered by a valid patent issuing thereon and enforceable against the Government. Such rights in "background" patents will not be acquired in contracts for supplies and services except by specific negotiation for such rights, unless the patents and the rights thereunder are listed and priced as a separate contract item. Questions of validity, enforceability and infringement of patents will be determined by the Office of the General Counsel, NASA Headquarters.

(b) It is also the policy of NASA to refer to the NASA Inventions and Contributions Board for consideration for an award each invention made by an employee of a NASA contractor or subcontractor to which NASA has acquired title and with respect to which an application for patent by NASA has been filed. In addition, the Administrator, upon his own initiative, may make monetary award on any such invention in such amount and upon such terms as he shall determine to be warranted.

(c) It is the policy of NASA to require reports of innovations and inventions which are made in the performance of work done under NASA contracts in order to protect the Government's interest therein and to provide for the widest practicable and appropriate dissemination thereof to the scientific and industrial communities.

§ 18–9.101–2 Use of new technology and property rights in inventions clauses.

Except as provided in § 18–9.101–5, the "New Technology" clause set forth in § 18–9.101–4 will be included in every NASA contract (made by or on behalf of NASA) or modification thereof where the performance of research, experimental, design, engineering or developmental work is contemplated. As illustrative, but without limitation, contracts for the following purposes are considered to contemplate work of the type described above:

(a) Conduct of basic or applied research;

(b) Design, or development, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA specifications or special requirements;

(c) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique; or

(d) Testing or experimenting with a machine, process, or technique to determine whether the same is suitable or could be made suitable for a NASA objective.

Architect-Engineer (A–E) contracts and construction contracts which require only "state of the art" or "brick and mortar" construction need not include the clause in § 18–9.101–4.

§ 18–9.101–3 Special instructions for waived inventions.

(a) The "New Technology" clause set forth in § 18–9.101–4 contains a Section IV pertaining to "Waived Inventions." When the conditions set forth in this § 18–9.101–3 are met, Section IV will be made operative to implement the waiver of title to inventions made in the performance of certain contracts and subcontracts made by the Administrator and published in the NASA Patent Waiver Regulations (14 CFR § 1245.104). Section IV, although an integral part of the "New Technology" clause, is not applicable to a prime contract or subcontract containing the clause except under the conditions set forth in paragraph (b) of this section and if there is included in the Schedule of the contract or subcontract the following statement:

> The Contracting Officer has made the findings required for Section IV of the New Technology clause to be applicable to this contract. (September 1964)

(b) The contracting officer shall not insert the statement set forth in paragraph (a) of this section in any contract, or approve its insertion in any subcontract, unless at the time of or prior to the execution of the contract or subcontract, he shall have made in writing each of the six findings set forth below with respect to the contract or subcontract concerned. As used in this paragraph (b), the term "contract" includes "subcontract of any tier."

(1) It is not a principal purpose of the contract to create, develop or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations.

(2) It is not a principal purpose of the contract to explore into fields which directly concern the public health or public welfare.

(3) The contract is not in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, with respect to which the acquisition of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position.

(4) The contract is not for services of the contractor for (i) the operation of a Government owned research or production facility; or (ii) coordinating and directing the work of others.

(5) The purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government.

(6) The work called for by the contract is in a field of technology in which the contractor has acquired technical competence (demonstrated by factors such as knowhow, experience, and patent position) directly related to an area in which the contractor has an established nongovernmental commercial position.

(c) These special instructions for waived inventions are designed to afford an opportunity to settle questions of rights in inventions at the time of contracting, in cases where the facts are readily determinable. However, the matter is not to be the subject of negotiation. The contracting officer shall consider and evaluate the facts readily available to him, including any facts submitted by the contractor or subcontractor who is awarding the subcontract concerned, if any, in order to determine whether the findings set forth in paragraph (b) of this section can be made. He is not, however, obliged to conduct independent investigations where to do so would unduly delay negotiation or execution of the contract or subcontract. However, he should avail himself of patent, technical or other counsel, as necessary, to assist him in evaluating the facts and making the findings required by paragraph (b) above. Where the necessary information is not readily available, the contracting officer may simply decide not to consider the matter further. Such a decision, or a finding differing from those set forth in paragraph (b) of this section, may be made a part of the prime contract file. In cases where the finding set forth in paragraph (b) of this section is not made, the contractor or subcontractor may, within 60 days after the date of execution of the contract or subcontract concerned, petition for waiver of title as provided in the NASA Patent Waiver Regulations (14 CFR § 1245.105).

(d) If the contracting officer makes the findings specified in paragraph (b) of this section with respect to the prime contract or any subcontract of any tier, he shall:

(1) Make such findings a part of the prime contract file;

(2) Furnish a copy to the contractor and subcontractor, if any, concerned;

(3) Furnish a copy to the patent representative appointed pursuant to § 18–9.150 of these regulations;

(4) Include the statement set forth in paragraph (a) of this section in the Schedule of the contract, or in the case of subcontracts of any tier, require the contractor to include the statement in any subcontract with respect to which the contracting officer has made such findings; and

(5) Furnish a copy of the findings together with a copy of the statement of work of the contract or subcontract concerned to the NASA Invention and Contributions Board, NASA Headquarters.

(e) It will be noted from Section IV of the "New Technology" clause and

from the NASA Patent Waiver Regulations that, although the title to inventions may have been waived to a contractor or subcontractor, such waiver is subject to a number of conditions, reservations, and obligations on the part of the contractor or subcontractor concerned.

§ 18–9.101–4 "New technology" clause.

NEW TECHNOLOGY (SEPTEMBER 1964)

The "New Technology" clause is comprised of five sections; Section I—Definitions, Section II—Reporting and Subcontracts, Section III—Rights, Section IV—Waived Inventions and Section V—Withholding; the clause paragraphs are lettered consecutively throughout the sections.

I—DEFINITIONS

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) "Reportable item" means any invention, discovery, improvement or innovation, whether or not the same is susceptible of protection under the United States patent laws, which is made in the performance of any work done upon an understanding in writing that this contract would be awarded or made in the performance of any work which is reimbursable under the clause, if any, in this contract providing for reimbursement of costs incurred prior to the date of this contract;

(ii) "Made" means conceived or first actually reduced to practice, and "making" means conceiving or first actually reducing to practice;

(iii) "Invention" means any reportable item which, in the opinion of the Administrator, falls within a statutory class of patentable subject matter (35 U.S.C. 101, 161, and 171);

(iv) "Person" means any individual, partnership, group, corporation, association, institution or other entity;

(v) When this clause is included in any subcontract, "contractor" means subcontractor and "contract" means subcontract; and

(vi) "Administrator" means the Administrator of NASA or his duly authorized representative.

II—REPORTING AND SUBCONTRACTS

(b) The Contractor shall furnish to the Contracting Officer a written report concerning each reportable item promptly upon the making thereof. Such report shall include such technical detail as is necessary to identify and to describe fully the nature, purpose, operation and physical (electrical, chemical, etc.) characteristics of the reportable item.

(c) In addition to the reports required in paragraph (b) above, the Contractor shall conduct frequent periodic reviews of the work performed by the Contractor to assure that all reportable items have been reported to the Contracting Officer. Within one month following each annual anniversary date of this contract, until completion of the contract work, and within one month following completion of the contract work, the Contractor shall furnish to the Contracting Officer a written summary of the review activities performed, including a report as required by paragraph (b) above for each reportable item not previously reported, or certifying that there are no reportable items.

(d)(1) The Contractor shall include Sections I through IV (paragraphs (a) through (p)) of this clause in each subcontract he awards under this contract where the performance of research, experimental, design, engineering, or developmental work is contemplated and shall set forth in each subcontract the identification of the prime contract and the identification and mailing address of the Contracting Officer.

(2) As to each subcontract of any tier for which the Contracting Officer makes the findings referred to in paragraph (k) of this clause, the Contractor shall include in the Schedule or elsewhere in such subcontract the statement set forth in said paragraph (k).

(3) In the event of refusal by a subcontractor to accept any of the provisions of this clause other than paragraph (q), the Contractor shall promptly notify the Contracting Officer of such refusal and shall not execute the subcontract in question until provisions have been approved in writing by the Contracting Officer for inclusion in said subcontract.

(4) The Contractor shall furnish promptly to the Contracting Officer a statement listing each subcontract he awards under this contract of over fifty thousand dollars ($50,000) of the type described in paragraph (d)(1) above, stating the name and address of the subcontractor, describing the work to be performed, stating the estimated cost, and giving the estimated completion date of the subcontract. Within one month following each annual anniversary date of this contract, until completion of the contract work, and within one month following completion of the contract work, the Contractor shall furnish to the Contracting Officer a written report listing each such subcontract not previously reported or certifying that no such subcontracts were awarded during the reporting period.

(e) With respect to each subcontract awarded by the Contractor of over fifty thousand dollars ($50,000) of the type described in paragraph (d)(1) above, the Contractor shall, within one month following completion of the work under such subcontract:

(i) Obtain from an official having authority to execute such subcontract on behalf of the subcontractor a letter certifying compliance by the subcontractor with the paragraphs of this "New Technology" clause included in such subcontracts; and

(ii) Submit a copy of such letter directly to the Contracting Officer upon receipt from the subcontractor.

III—RIGHTS

(f)(1) An invention reported under this clause shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2457(a) (1958)] (hereinafter called "the Act").

(2) The presumption of paragraph (f)(1) above shall be conclusive unless the Contractor at the time of reporting the invention submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the invention was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(3) Regardless of whether the Contracting Officer has considered the matter, if the Schedule of this contract does not include the statement set forth in paragraph (k) below, the Contractor may, within 60 days from the date of execution of this contract, petition the Administrator for waiver of title to inventions, pursuant to 14 CFR § 1245.105, or, after reporting an invention, may petition for waiver of title to that invention, pursuant to 14 CFR § 1245.106.

(g) Regardless of whether title to a given invention would otherwise be subject to a waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (f)(2) above. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the invention and will notify the Contractor whether the Administrator has determined that the invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(h) With respect to each invention which becomes the exclusive property of the United States, the Contractor shall:

(1) Inform the Contracting Officer at the earliest practicable date of any public use or sale by the Contractor of the invention or of any publication by the Contractor describing the invention; and

(2) Furnish, upon written request by the Contracting Officer, such full and complete technical and other information available to the Contractor as is necessary for the preparation of a patent application and for prosecution of such patent application, and, in addition, shall execute or endeavor to secure execution of all lawful documents and instruments determined by the Administrator to be necessary for the preparation and prosecution of applications for Letters Patent covering the invention.

(i) Regardless of any other disposition of rights in the invention, in the case of each reported invention which is determined to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act, 14 CFR § 1245.112 provides that the Contractor is granted a nonexclusive, irrevocable, royalty-free license to practice such invention together with the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. Such license and right will be nontransferable except to a successor of that part of the Contractor's business to which the invention pertains.

(j)(1) The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others do so, all reports furnished pursuant to paragraphs (b), (c), and (h)(2) of this clause.

(2) Nothing contained in this "New Technology" clause shall be deemed to grant any license under any invention as to which rights of the Government are not expressly obtained pursuant to the Act, as implemented by this clause.

IV—WAIVED INVENTIONS

(k) This section IV (paragraphs (k) through (p)) of this clause shall be applicable to this contract only if the Contracting Officer has made the findings set forth in NASA Patent Waiver Regulations 14 CFR § 1245.104, which are also set forth in paragraph 9.101–3(b) of the NASA Procurement Regulations, and if there is included in the Schedule of this contract the following statement:

"The Contracting Officer has made the findings required for Section IV of the New Technology clause to be applicable to this contract."

(l) When this section is applicable to the contract, as provided in paragraph (k) above, the title to any invention made in the performance of this contract is subject to the waiver granted by the Administrator in 14 CFR § 1245.104 and to the conditions, reservations and obligations contained in paragraphs (m), (n) and (o) below.

(m) With respect to any particular invention, the waiver referred to in paragraph (l) above is subject to the following conditions:

(1) That the Contractor report the invention during the term of this contract;

(2) That the invention is determined to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) in the performance of work under this contract; and

(3) That the invention is designated at the time of reporting as being an invention upon which the Contractor intends to file or has filed a United States patent application.

(n) With respect to any particular invention, the waiver referred to in paragraph (l) above is subject to the following reservations:

(1) The reservation of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the invention throughout the world by or on behalf of the United States or any agency thereof, state, or domestic municipal government, or any foreign government pursuant to any existing or future treaty or agreement with the United States;

(2) The reservation by the Administrator of the right to require the granting of a license to any applicant on a nonexclusive, royalty-free basis unless the Contractor, his licensee, or his assignee has taken effective steps within three years after a patent issues on the invention to manufacture the invention in the case of a composition or product, to practice the invention in the case of a process, or to operate the invention in the case of a machine, and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public, or has made the invention available for licensing royalty-free or on the terms that are reasonable in the circumstances, or the Contractor shows cause why he should retain the full benefits of waiver for a further period of time; and

(3) The reservation by the Administrator of the right to require the granting of a license to any applicant royalty-free or on terms that are reasonable in the circumstances for such practice of the invention as may be appropriate to satisfy the requirements which may be made by governmental regulations for public use of the invention, or as may be necessary to fulfill health needs, or for other public purposes, if any, stipulated in the Schedule of this contract.

(o) With respect to any particular invention, the waiver referred to in paragraph (l) above is voidable at the option of the Administrator unless the contractor shall:

(1) File within eight months from the date of reporting of such an invention, an application for United States Letters Patent disclosing and claiming the invention, and include within the first paragraph of the specification of such application and any patent issuing thereon the following statement:

The invention described herein was made in the performance of work under a NASA contract and is subject to the provisions of Section 305 of the National Aeronautics and Space Act of 1958, Public Law 85-568 (72 Stat. 435; 42 U.S.C. 2457).

(2) Furnish to the Administrator a copy of each patent application, domestic or foreign, filed thereon, together with identifying serial number and filing date promptly upon receipt thereof;

(3) Execute and furnish to the Administrator instruments fully confirmatory of the rights herein reserved by the Government;

(4) In the event the Contractor elects not to continue prosecution of any application filed thereon, notify the Administrator within sufficient time to allow assumption of prosecution by the Government, and deliver to the Administrator such duly executed instruments as are necessary to vest in the Administrator title thereto, including an instrument of assignment to such application;

(5) Convey to the United States Government, on written request, the Contractor's entire right, title and interest in any foreign country in which the Contractor has not filed an application on said invention within—

(i) Nine months from the date a corresponding U.S. application is filed;

(ii) Six months from the date permission is granted to file foreign applications where such filing has been prohibited for security reasons; or

(iii) Such longer periods as may be expressly approved by the Administrator.

(6) Grant any license which the Administrator may require to be granted pursuant to paragraph (n) (2) or (3) above.

(7) Report, upon written request not more often than annually, the commercial use that is being made or is intended to be made of the invention.

(p) Before either of the rights set forth in paragraph (n) (2) or (3) above are exercised, notice shall be given to the Contractor that he may show cause before the Inventions and Contributions Board of NASA why he should not be required to grant such a license.

V—WITHHOLDING

(q) (1) Except as provided in subparagraphs (3) and (4) below, if the Contractor fails to comply with the provisions of this clause after receipt of a written decision of the Contracting Officer, pointing out wherein the Contractor has failed to comply and setting a time limit for compliance, there shall be withheld from payment, unless such failure has been corrected within the time limit set, either five percent (5%) of the amount of this contract as from time to time amended, or fifty thousand dollars ($50,000), whichever is less.

(2) Without regard to whether a written decision as described in subparagraph (1) above has been issued, after payment of eighty-five percent (85%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either five percent (5%) of such amount, or fifty thousand dollars ($50,000), whichever is less, shall have been set aside, such reserve or balance to be retained until the Contractor shall have complied with the provisions of this clause, as well as with such written decision or decisions as may have been issued pursuant to subparagraph (1) above and not withdrawn or successfully challenged on appeal pursuant to the "Disputes" clause.

(3) The maximum amount which may be withheld under this paragraph (q) shall not exceed five percent (5%) of the amount of this contract or fifty thousand dollars ($50,000), whichever is less. If this contract is a no fee contract with a contractor other than an educational institution, the amount which may be withheld shall not exceed one percent (1%) of the amount of the contract or fifty thousand dollars ($50,000), whichever is less. No amount shall be withheld pursuant to this Section V so long as an equivalent amount is being withheld under other provisions of this contract.

(4) The withholding provisions of subparagraphs (1) through (3) of this paragraph (q) do not apply to the provisions of paragraph (e) or Section IV of this clause, or to no fee contracts with an educational institution. Nothing herein shall be interpreted as prohibiting the Contractor from including a withholding provision in his subcontracts.

§ 18-9.101-5 Property rights in inventions clause.

The clause set forth below shall be used in contracts for basic or applied scientific research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of research.

PROPERTY RIGHTS IN INVENTIONS (NOVEMBER 1962)

This contract and all subcontracts hereunder are subject to Section 305 of the National Aeronautics and Space Act of 1958 relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Any invention made in performance of work under this contract shall be presumed to have been made under the conditions described in paragraphs (1) or (2) of Section 305(a) of the Act. The Contractor shall furnish to the Contracting Officer a written report containing full and complete technical information concerning any invention made in the performance of any work under this contract promptly upon the making of such invention and shall require all subcontractors to do so. Upon written request of the Contracting Officer, the Contractor shall furnish additional information available to him, and shall secure the execution of such documents as may be necessary to enable the Administrator, NASA, to file and prosecute patent applications on any such invention. Prior to completion of this contract, the Contractor shall furnish to NASA a report as to whether or not any inventions of the type referred to herein have been made in the performance of work under this contract.

§ 18-9.101-6 Contracts relating to atomic energy.

Whenever any contract is entered into with or for the benefit of the Atomic Energy Commission, the Office of General Counsel, NASA Headquarters, shall be consulted for policies, instructions and contract clauses relating to innovations, inventions, patents, data and copyrights.

§ 18-9.101-7 Patent rights under product improvement programs or independent research and development programs.

Where NASA under its established procedures provides, as an item in the computation of overhead, financial support to (i) a contractor's product improvement program, or (ii) a contractor's independent research and development program, the inventions resulting from such programs are not subject to the "New Technology" or the "Property Rights in Inventions" clauses merely by virtue of the provision of such financial support. The clause set forth below may be included in the Schedule of a cost-reimbursement type contract wherein NASA is providing such support to the contractor's product improvement program or independent research and development program.

INVENTIONS MADE UNDER CONTRACTOR'S INDEPENDENT RESEARCH AND DEVELOPMENT PROGRAMS (AUGUST 1963)

Any invention made in the performance of any work by the Contractor under the Contractor's own product improvement program, or the Contractor's independent research and development program, even though supported by an allowance of costs for such program as a part of the overhead costs hereof, will not be subject to the "New Technology" clause or the "Property Rights in Inventions" clause (whichever is included in this contract) unless said work is identified in writing as being required in the performance of this contract.

§ 18-9.102 [Reserved]

§ 18-9.103 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a patent or copyright based on the manufacture or use of a patented invention or copying of copy-

righted material for the Government by a contractor or by a subcontractor (including lower tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to such infringement. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent will be given as herein provided. The "Authorization and Consent" clause set forth below shall be included in all contracts for supplies (including construction work), and construction contracts, as follows:

AUTHORIZATION AND CONSENT (JANUARY 1963)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance.

(b) Since greater latitude in the use of patented inventions is to be allowed in a contract for research, experimental, design, engineering or developmental work than in a contract for supplies, the "Authorization and Consent" clause set forth below shall be used in contracts, including Facilities contracts, involving such work.

AUTHORIZATION AND CONSENT (SEPTEMBER 1962)

The Government hereby gives its authorization and sent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontract).

§ 18–9.104 Patent indemnification of Government by contractor.

(a) NASA's mission is directed to:

(1) Research into the solution of problems of flight within and outside the atmosphere;

(2) The development, construction, testing, and operation for research purposes of aeronautical and space vehicles; and

(3) Such other activities as may be required for the exploration of space.

A patent indemnity clause is not appropriate in contracts for experimental, developmental, or research work.

(b) When it is known that an item being procured is protected, or probably will be protected, by a United States patent or patents, the inclusion of a "Patent Indemnity" clause may be appropriate. In such case, where the patent owner informs a prospective bidder or otherwise contends that the item being procured would infringe his patent or patents, the patent indemnity clause set forth below, limited to the specifically designated patents in question, may be included in the contract if its use is approved by Patent Counsel.

PATENT INDEMNITY (AUGUST 1963)

(a) If the amount of this contract is in excess of five thousand dollars ($5,000), the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of the United States letters patent designated in paragraph (b) below and the United States letters patents which may mature on the patent applications, if any, designated in paragraph (b) below, arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(b) This "Patent Indemnity" clause is applicable to such United States patents and patent applications as are next designated (*here designate the patents or patent applications*).

§ 18–9.105 Notice and assistance.

The Government should be notified by the contractor of all claims of infringement in connection with the performance of a contract which come to the contractor's attention, especially where the Government has given its authorization and consent for the use and manufacture of any patented invention in the performance of the contract or where the contract calls for the delivery to the Government of supplies, models, or prototypes. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the performance of the contract. Accordingly, the "Notice of Assistance Regarding Patent and Copyright Infringement" clause set forth below shall be included in contracts in excess of $10,000.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (SEPTEMBER 1962)

The provisions of this clause shall be applicable only if the amount of this contract exceeds ten thousand dollars ($10,000).

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

§ 18–9.106 Processing of infringement claims.

Any claim for infringement of a patent or a copyright should be addressed to or brought to the attention of the Office of General Counsel, NASA Headquarters, and should identify (i) the United States copyright, patent, or patent application, (ii) the interest of the claimant, and (iii) the acts alleged to constitute the infringement.

§ 18–9.107 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from an issuance of a patent, may be a violation of 18 U.S.C. 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interest of national security. Accordingly, the "Filing of Patent Applications" clause set forth below shall be included in every classified contract and in every unclassified contract which covers or is likely to cover classified subject matter.

FILING OF PATENT APPLICATIONS (SEPTEMBER 1962)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181–188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the United States Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes

to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

§ 18–9.108 Payment of royalties.

The Government has acquired license and other rights under a large number of inventions as the result of Government-sponsored research and development. In order that the Government may determine whether the approval as an item of allowable cost of the payment of royalties by the contractor under license agreement is consistent with the rights which the Government has acquired, these payments of royalties by the contractor are allowable only to the extent authorized by the contracting officer. Accordingly, the "Payment of Royalties" clause set forth in § 18–9.108–1 shall be included in all NASA cost-reimbursement type contracts. This clause may be omitted from contracts with members of the Manufacturers Aircraft Association and the clause set forth in § 18–9.108–2 substituted therefor.

§ 18–9.108–1 Payment of royalties—standard clause.

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payment by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of supplies, materials, or components shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

§ 18–9.108–2 Payment of royalties—manufacturers aircraft association deviation.

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payment by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of standard commercial supplies shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents: *Provided, however,* That the approval of the Contracting Officer shall not be required for the payment of royalties pursuant to the terms of licenses issued under patents awarded compensation in accordance with that agreement known as the Cross-Licensing Agreement or the Manufacturers Aircraft Association, Inc., in effect as of December 31, 1928, as supplemented by the Agreement of September 30, 1935.

§ 18–9.109 Facilities license.

Where facilities are being constructed or acquired for the first time under a contract, the following clause shall be included therein.

LICENSE FOR SUBSEQUENT USE (AUGUST 1963)

Whenever the Contractor directly or by any subcontractor intends under this contract either (i) to acquire facilities for the account of the Government and to install such facilities or (ii) to fabricate facilities, or to do both (i) and (ii), which facilities are for the purpose either (1) of producing a patented product, or (2) of producing a product in accordance with a patented or proprietary process, the Contractor, before doing so, shall notify the Contracting Officer of his intention, so that consideration can be given to negotiating a license agreement for the use of such facilities by persons to whom the Government may subsequently sell or transfer the facilities. Such negotiation shall be for the purpose of determining the terms and conditions under which the Contractor will grant to or obtain for the Government (in addition to the rights granted by any clause which may be included in this contract entitled "New Technology") the right to convey to any purchaser or transferee of all or a part of the facilities under this contract an irrevocable license to practice and cause to be practiced solely in the maintenance or operation of the facilities any and all inventions (whether or not patented) of the Contractor or a subcontractor hereunder incorporated in, or used by the Contractor or subcontractor in the operation of, the facilities acquired or fabricated by the Contractor for the account of the Government under this contract.

§ 18–9.110 Proposals of equivalent merit.

When two or more potential contractors are judged to have presented proposals of equivalent merit, willingness to permit the Government to acquire and retain title to resulting inventions will be an additional factor in the evaluation of the proposals.

§ 18–9.150 Designation of representative for new technology and for patents.

(a) (1) When a NASA contract contains the clause entitled "New Technology" set forth in § 18–9.101–4 (hereinafter referred to as "the clause") the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative") to administer the clause.

(2) When a NASA contract contains the "Property Rights in Inventions" clause set forth in § 18–9.101–5, the contracting officer shall designate a New Technology Representative and a Patent Representative to administer that clause. The respective responsibilities and authorities of these representatives in administering that clause shall be commensurate with those set forth in paragraphs (e), (f), and (g) of this section and §§ 18–9.151, 18–9.152, and 18–9.153, with respect to the "New Technology" clause, to the extent applicable in view of the more limited requirements of the "Property Rights in Inventions" clause.

(b) Designation of these representatives shall be by letter to the contractor, unless accomplished in the contract, with a copy to each representative so designated. The notification to the contractor shall state that all correspondence and other matters relating to the clause should be addressed to the New Technology Representative unless transmitted in response to correspondence from the Patent Representative. Letters to be used for these purposes are set forth in § 18–9.154.

(c) Except as provided in paragraph (d) of this section, the New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the NASA installation concerned; and the Patent Representative shall be the Patent Counsel or the staff member (by titled position) having cognizance of patent matters for the NASA installation concerned.

(d) The staff members having cognizance of technology utilization matters and of patent matters for the Western Operations Office normally will be designated as New Technology Representative and Patent Representative respectively for NASA contracts as assigned by Headquarters or field installations, in accordance with established policies.

(e) The New Technology Representative shall be furnished a copy of the contract, modifications thereto, progress reports, and other pertinent material by the contracting officer, and shall be notified by the contracting officer of the organizational unit of the NASA installation having technical cognizance of the contract.

(f) The Patent Representative shall be furnished a copy of the contract, and modifications thereto, by the contracting officer, as well as copies of findings pursuant to § 18–9.101–3.

(g) The New Technology Representative and the Patent Representative shall maintain complete files of correspondence and other actions involving their respective administration of the clause. Copies of documents which are appropriate for inclusion in the general contract files shall be furnished the contracting officer.

§ 18–9.151 Contract review.

(a) The New Technology Representative shall review, as necessary, the technical progress of work performed under the contract to ascertain whether the contractor and his subcontractors, where appropriate, are complying with paragraphs (b), (c), (d), and (e) contained in section II of the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports, and a copy of the written statement, if any, submitted with the report of the reportable item. All correspondence relating to inventions and waivers will also be forwarded to the Patent Representative. The Patent Representative shall review each reported item to determine the presence of inventions and notify the contractor and the New Technology Representative if he determines that any reportable item constitutes an invention.

(c) Consultations will be held by the New Technology Representative and the Patent Representative with cognizant technical personnel and others con-

cerned, where required, to determine the relationship of inventions, discoveries, improvements and innovations made under contracts and subcontracts to work performed under the contract, and the value thereof to NASA or other Government agencies.

(d) No action shall be taken by either the New Technology Representative or the Patent Representative which would involve a change or increase in the work required to be performed under the contract, or which otherwise is outside the scope of obligations imposed upon the contractor by the contract. Any written decision pursuant to paragraph (q) of the clause or other correspondence relating thereto shall be prepared for and signed by the contracting officer.

(e) Upon completion of the contract work, the New Technology Representative shall determine whether the contractor and his subcontractor, where appropriate, have complied with paragraphs (b), (c), (d), and (e), contained in Section II of the clause. Such determinations generally will require consultation with the cognizant technical personnel.

(f) Upon completion of the contract work, the Patent Representative shall determine whether the contractor, and his subcontractors, where appropriate, have complied with paragraph (h) and Section IV of the clause.

§ 18–9.152 Contract clearance.

(a) Upon submission by the contractor of the final reports required by paragraphs (c) and (d)(3) of the clause, the New Technology Representative shall determine whether the contractor has complied with paragraphs (b), (c), and (d) of the clause and, if so, shall certify such compliance promptly to the contracting officer, with copy to the Patent Representative.

(b) Upon receipt of the copy of the New Technology Representative's certification of compliance, the Patent Representative shall determine whether the contractor has complied with paragraph (h) of the clause and, if so, shall certify such compliance to the contracting officer.

(c) Pursuant to the withholding provisions of the clause, final payment under the contract shall not be approved by the contracting officer until he has received the certifications of compliance referred to in paragraphs (a) and (b) of this section.

§ 18–9.153 Consultation with patent representative.

The New Technology Representative shall consult with the Patent Representative whenever a question arises as to:

(1) Whether a given invention, discovery, improvement, or innovation was made in the performance of work under the contract;

(2) Whether a given subcontract is of the type for which section 305(b) of the National Aeronautics and Space Act of 1958 requires insertion of effective provisions for the reporting of reportable items;

(3) Whether a proposed modification of the New Technology clause for insertion in a given subcontract meets the requirements of section 305(b) of the National Aeronautics and Space Act of 1958; and

(4) The identity of inventors or other originators of a reportable item.

§ 18–9.154 Sample designation letters.

(a) Sample letter to be used for designations under "New Technology" clause.

NASA LETTERHEAD STATIONERY

Date _____

Re: _____
(Contract Number)

(Contractor's Name
and Address)

GENTLEMEN:

The (title and address of the Technology Utilization Officer or the staff member having cognizance of technology utilization matters for the NASA installation concerned) has been designated as the New Technology Representative and the (title and address of the Patent Counsel or the staff member having cognizance of patent matters for the NASA installation concerned) has been designated as the Patent Representative to represent the contracting officer in administering the "New Technology" clause in this contract. In this capacity, they are responsible for monitoring compliance with that clause.

Correspondence with respect to the clause should be directed to the New Technology Representative unless transmitted in response to correspondence from the Patent Representative.

The requirement in the New Technology clause that there be set forth in subcontracts containing the clause the identification and mailing address of the contracting officer may be satisfied by including in such subcontracts these three paragraphs.

(To be signed by the Contracting Officer)

(b) Sample letter to be used for designations under Property Rights in Inventions clause.

NASA LETTERHEAD STATIONERY

Date _____

Re: _____
(Contract Number)

(Contractor's Name
and Address)

GENTLEMEN:

The (title and address of the Technology Utilization Officer or the staff members having cognizance of technology utilization matters for the NASA installation concerned) has been designated as the New Technology Representative and the (title and address of the Patent Counsel or the staff member having cognizance of patent matters for the NASA installation concerned) has been designated as the Patent Representative to represent the contracting officer in administering the "Property Rights in Inventions" clause in this contract. In this capacity, they are responsible for monitoring compliance with that clause.

Correspondence with respect to the clause should be directed to the New Technology Representative unless transmitted in response to correspondence from the Patent Representative.

(To be signed by the Contracting Officer)

Subpart 18–9.2—Data and copyrights

§ 18–9.200 Scope of subpart.

This subpart sets forth NASA policy, implementing instructions, and contract clauses with respect to acquisition and use of data and copyrights. The policy and procedures set forth in this subpart apply to all data required to be delivered to the Government under a contract whether such data originates with the contractor or a subcontractor.

§ 18–9.201 Definitions.

For the purpose of this subpart, the following terms have the meanings set forth below:

(a) "Data" means writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of any similar nature whether or not copyrighted. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) "Proprietary data" means data providing information concerning the details of a contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout, and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the contractor has protected such information from unrestricted use by others.

(c) "Other data" means all data other than "proprietary data" and includes:

(1) Operational data which provides information suitable, among other things, for instruction, operation, maintenance, evaluation or testing; and

(2) Descriptive data which provides descriptive or design drawings or descriptive material in the nature of design specifications which, although not including any "proprietary data," may nevertheless be adequate to permit manufacture by other competent firms.

(d) "Standard commercial items" means supplies or services which normally are or have been sold or offered to the public commercially by any supplier.

§ 18–9.202 Acquisition and use of data.

§ 18–9.202–1 Acquisition of data.

(a) *General.* NASA generally subscribes to and follows the policy and procedures with respect to the acquisition of data set forth in ASPR 9–202.1. However, NASA's needs for data are different from those of the Department of Defense since NASA is concerned principally with research and development. In a research and development program the needs for data may not always be determinable at the time of contracting. NASA has developed a general clause designed to preserve a contractual right to call for such data as is retained in the normal course of business at any time up to one year after final payment under the contract. The "Data Requirements" clause set forth in paragraph (e) of this section has been developed to serve this need of NASA, and the instructions for its use are set forth in paragraph (d) of this section. Discussion of known requirements for data, in general, is set

forth in paragraph (d) of this section and the requirements for data in supply contracts are treated in (c) below.

(b) *Known requirements for data.* Use of a "Rights in Data" clause does not obtain for the Government the delivery of any data whatsoever, but only rights to use that data which is specified elsewhere in the contract to be delivered. When the requirements for data are known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract, the requirements for data must be specified in the Schedule of the contract. These data requirements should be made known to the contracting officer prior to the preparation of invitations for bids in the case of formally advertised procurements or prior to the preparation of requests for proposals in the case of contracts to be awarded by negotiation. Also, in the case of contracts to be awarded by negotiation, the requirements for data should be discussed as a part of the negotiation proceedings.

(c) *Requirements for data in supply contracts.* "Proprietary data" will not be requested by the Government in formally advertised procurements and procurements for standard commercial items. The requirements for data in a supply contract should be know in advance of making the contract and should be specifically set forth in the purchase request. If the negotiator feels that the data requirements furnished him are inadequate to obtain all the data which the Government should have, he should obtain further guidance from the cognizant technical office. If further data is then believed to be necessary, the services of legal counsel should be requested in drafting a suitable Schedule provision requiring the furnishing of such data, using the "Data Requirements" clause set forth in paragraph (e) of this section as a guide, where appropriate.

(d) *Requirements for data in contracts for experimental, developmental, or research work.* (1) If the contract calls for the development and delivery of hardware, or for the development of a practical process, the clause set forth in paragraph (e) of this section shall be included in the contract. Subparagraphs (a)(2) (ii) and (iii) of the clause may be deleted or modified in accordance with NASA's requirements as indicated by the project engineer. Also, upon request of the contractor, provision (2) of paragraph (c) may be deleted, in which case the identification "(1)" for provision (1) should also be deleted.

(2) In addition to the "Data Requirements" clause of paragraph (e) of this section, the Schedule of the contract may contain such specific provisions for the furnishing of data as may have been requested by the cognizant technical office or the contracting officer. If the contract does not call for the development and delivery of hardware, or for the development of a practical process, the instructions as to what data the contractor is to be required to furnish should ordinarily be set forth in the work statement or be included in a Schedule provision calling for reports. In any event, the contractor shall be required to furnish to the Government for the price of the work all data resulting directly from performance of the contract, whether or not it would otherwise be "proprietary data." The "Data Requirements" clause set forth in paragraph (e) of this section is not appropriate for use in research or study contracts unless hardware is to be furnished or a practical process is to be developed in the performance of the contract. However, nothing herein shall preclude the use of a data requirements clause in such contracts, but if such a clause is to be used, the assistance of legal counsel shall be obtained in drafting the clause.

(e) *Data requirements clause.*

DATA REQUIREMENTS (AUGUST 1963)

(a) To the extent that the following data is not elsewhere required to be furnished to the Government under this contract, and is of the type customarily retained in the normal course of business, the Contractor, upon written request of the Contracting Officer at any time during contract performance or within one year after final payment, shall furnish the following:

(1) A set of engineering drawings necessary to enable reproduction or, where appropriate, manufacture of any equipment or items furnished under the contract (other than components or items of standard commercial design or items fabricated heretofore); or a set of flow sheets and engineering drawings necessary to enable performance of any process developed under the contract. Such set or sets of drawings and flow sheets shall be reproducible copies incorporating all changes made in the equipment or process in the form in which it was delivered to the Government.

(2) Any of the following data which is necessary to explain or help Government technical personnel understand any equipment, items, or process developed under the contract and furnished to the Government:

(i) A copy (which shall be a reproducible master if one is so requested) of drawings and other technical data used in or prepared in connection with the development, practice, and testing of any process or processes required under the contract, or with the development, fabrication, and testing of prototype models of equipment or items (other than items of standard commercial design or items fabricated heretofore), if required under the contract.

(ii) A report of all studies made in planning the work, and in developing background research for the work, including citation references to all such background research, and a copy of all compilations, digests, or analyses of such background research compiled in connection with the performance of this contract.

(iii) A copy (which shall be a reproducible master if one is so requested) of design studies, research notes, parameter and tolerance studies, drawings, including Contractor's identification of symbols and markings, specifications, test results, and any other technical information used in any research, development, design, engineering, and testing required in the performance of this contract, including test equipment and related items, together with any information as to safety precautions which may be necessary in connection with the manufacture, storage, or use of the equipment, material, or process, if any, in the event that an equipment, material, or process is the subject of research under this contract.

The Contractor shall not be required to furnish any background data which may be described in (ii) or (iii) above unless such data is essential and closely related to the contract work.

(b) All reports, data, and recorded information which are required to be furnished by the Contractor under this provision, as well as all other reports of a technical nature required to be furnished under this contract, are "Subject Data" within the meaning of the clause of the General Provisions of this contract entitled "Rights in Data."

(c) Nothing contained in this "Data Requirements" clause shall require the Contractor to deliver (1) any data, the delivery of which is excused by paragraph (1) of the clause of the General Provisions of this contract entitled "Rights in Data"; or (2) data previously developed by parties other than the Contractor, independently of this contract and acquired by the Contractor prior to this contract under conditions restricting the Contractor's right to disclose the same. If any of the data requested is in the public domain or copyrighted, it will be sufficient for the Contractor to identify the data and furnish a citation as to where it may be found.

(d) Any reproducible copies requested under this "Data Requirements" clause shall be of a type and prepared in accordance with good commercial practice.

(e) In the event the Contracting Officer requests the delivery of data by the Contractor, as contemplated by (a) above, prior to final payment, such request shall be treated as a change under the clause of this contract entitled "Changes" and an equitable adjustment in the price, if this is a fixed-price contract, or estimated cost and any fixed fee, if this is a cost-type contract, shall be made to cover the cost of preparing drawings called for in (a)(1) above, and of collecting, preparing, editing, duplicating, assembling, and shipping the data requested under (a) above, but only to the extent that the Contractor warrants that such costs were not included in the price (or estimated cost and fixed fee) of the contract. The Contractor shall comply with requests of the Contracting Officer made under (a) above, within one year following final payment, *provided*, That suitable provision is made for reimbursement of the additional costs of complying with such request, together with a reasonable fee or profit thereon, such additional costs being limited to the costs set forth above, and warranted to have been excluded from the price (or estimated cost and fixed fee) of the contract. Any adjustment or payment under this paragraph (e) shall not include any amount for the value of the data, as distinguished from the costs set forth above.

§ 18–9.202–2 Use of data.

(a) *Other data.* When data other than "proprietary data" is obtained, it shall be obtained without any limitation on its use by the Government.

(b) *"Proprietary data."*

(1) *Supply contracts.* When "proprietary data" is obtained by negotiation under a supply contract, in accordance with § 18–9.202–1, the purposes for obtaining it will govern its use. If it is obtained for the purpose of enabling the Government to establish additional sources of supply, it shall be obtained without limitation as to its use; in such case the "Rights in Data" clause defined and prescribed in §18–9.203–2 shall be included in the contract and the requirement for the "proprietary data" shall be specified in the contract Schedule. However, where it has been determined to be necessary to obtain "proprietary

data" for some limited purpose, such as emergency manufacture by the Government, such data may be obtained subject to limitation as to its use; in such case the "Rights in Data" clause required by § 18–9.203–2 together with the paragraph (j) set forth in § 18–9.203–3 shall be included in the contract, and the contract Schedule shall suitably identify the data which shall be subject to limited use.

(2) *Contracts for experimental, developmental, or research work.* When "proprietary data" is obtained under a contract having as one of its principal purposes experimental, developmental, or research work, it shall be obtained without limitation as to its use; in such case the "Rights in Data" clause set forth in § 18–9.203–1 shall be included in the contract.

§ 18–9.202–3 [Reserved]

§ 18–9.202–4 [Reserved]

§ 18–9.202–5 [Reserved]

§ 18–9.202–6 Data furnished on a restricted basis in support of a proposal.

When an offeror has submitted data on a restricted basis in accordance with § 18–3.109 in response to a request for a proposal, and it is proposed to award the contract to such offeror, the contracting officer shall ascertain whether it is desired to acquire rights to use all or part of the data furnished with the proposal. If it is desired to acquire such rights, the contracting officer shall determine in accordance with § 18–9.201 whether such data is proprietary in nature, and shall negotiate with the offeror in accordance with the policy prescribed in § 18–9.202 for the acquisition and use of such data. If the offeror agrees to furnish such data under the contract, the appropriate clause of § 18–9.203 shall be inserted in the contract, and the Schedule shall identify the data to be covered by such clause.

§ 18–9.203 Rights in data clauses.

(a) If data is to be delivered under the contract, the appropriate "Rights in Data" clause set forth below shall be added to the "General Provisions." However, a "Right in Data" clause does not in itself specify the data with respect to which the Government will obtain the rights set forth in that clause. Therefore, Schedule provisions are necessary to specify the specific data which the Government wants to have furnished. (See § 18–9.202–1 for instructions concerning suitable Schedule provisions.) The rights prescribed in the "Rights in Data" clause attach only to the data specified to be delivered. Except for the cases noted in paragraph (b) of this section, when data is to be delivered the "Rights in Data" clause set forth in § 18–9.203–1 shall be included in the contract if it involves experimental, developmental, or research work; and if the contract is for supplies the clause defined and prescribed in § 18–9.203–2, together with paragraph (j) set forth in § 18–9.203–3, if applicable, shall be included in the contract.

(b) In the case of contracts for the acquisition of existing works, the provisions of § 18–9.205 are applicable. In contracts for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, translations, adaptations, and the like; or the histories and works described in § 18–9.204–3; the provisions of § 18–9.204–2 are applicable. Section 18–9.206 is applicable in contracts for performance outside the United States, its territories or possessions, or Puerto Rico. In contracts for research with a nonprofit institution using NASA Form 246, the provisions of § 18–9.204–50 are applicable; and in those for research with an educational or nonprofit institution using NASA Form 419S, the provisions of § 18–9.204–51 are applicable.

§ 18–9.203–1 Rights in data clause for use in contracts for experimental, developmental or research work.

RIGHTS IN DATA (SEPTEMBER 1964)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings, or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate, or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed, if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others.

§ 18–9.203–2 Rights in data clause for use in supply contracts.

In all supply contracts where data is to be delivered, paragraph (i) of the "Rights in Data" clause in § 18–9.203–1 shall be omitted and the following paragraph (i) shall be substituted therefor.

(i) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the Contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (July 1962)

In negotiated supply procurements, when "proprietary data" as defined in § 18–9.201 is to be obtained, the Sched-

ule of the contract shall specify the extent of the "proprietary data" to be furnished.

§ 18–9.203–3 Limited rights in data provision for use in supply contracts.

In negotiated supply contracts where "proprietary data" is to be acquired and such data is needed only for a limited purpose, such as maintenance, the clause set forth in § 18–9.203–2 should be supplemented by the additional paragraph (j) set forth below. The Schedule of the contract must state the extent of the "proprietary data" to be furnished subject to such limitations. Paragraph (j) below is not authorized for use in a contract having as one of its principal purposes experimental, research, or developmental work.

(j) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be released outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work; *provided,* when Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause; *provided further,* such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

Furnished under United States Government Contract No. _____ and only those portions hereof which are marked (for example, by circling, underscoring, or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of _____. This legend shall be marked on any reproduction hereof in whole or in part.

Provided, that such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof, which the Contractor has previously delivered to the Government without limitations. (July 1962)

§ 18–9.204 Contract clauses—special.

§ 18–9.204–1 [Reserved]

§ 18–9.204–2 Production of motion pictures.

The clause set forth below is approved for use in contracts for the production of motion pictures with or without accompanying sound, and in all contracts for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like.

RIGHTS IN DATA (AUGUST 1963)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All Subject Data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole or in part or in any manner or form, nor authorize others so to do, without the written consent of the Government until such time as the Government may have released such Data to the public.

(c) The Contractor agrees to grant and does hereby grant to the Government and its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world (i) to publish, translate, reproduce, deliver, perform, use and dispose of, in any manner, any and all Data not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract; and (ii) to authorize others so to do.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any Data furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such Data.

(e) License rights under patents which might otherwise be implied to the parties hereto by virtue of this clause or as a result of the furnishing to the Government of Subject Data under this contract shall be in accordance with the clause of this contract entitled "Implied Licenses."

(f) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *provided,* such incorporated material is identified by the Contractor at the time of delivery of such work.

§ 18–9.204–3 Histories and other works.

The contract clause set forth in § 18–9.204–2 is suggested for use in contracts for:

(1) Histories of NASA activities or installations;

(2) Works pertaining to recruiting, morale, training, or career guidance;

(3) Surveys of Government establishments, and

(4) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties.

When the "Rights in Data" clause set forth in § 18–9.204–2 is used in contracts of the kinds listed above, there shall be added to the end of the first sentence of paragraph (a) of that clause, the following:

"or which are in fact delivered to the Government in the performance of this contract." (August 1963)

§ 18–9.204–50 Short form clause, fixed-price, research contract with nonprofit institutions (including educational institutions).

In contracts of the kind described in the heading, which are executed using NASA Form 246, the following clause shall be included in the contract.

TECHNICAL REPORTS AND DATA (JULY 1962)

(a) Upon completion of the work under this contract, the Contractor shall submit the number of copies required in the Schedule of a complete and final technical report of his findings and conclusions together with any original illustrations and photographic negatives. With the prior approval of the Contracting Officer, the Contractor may submit interim technical reports in lieu of the final report at such intervals as may be agreed upon.

(b) The Government may publish, reproduce or use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information and other scientific data resulting from this contract.

§ 18–9.204–51 Short form clause, cost-reimbursement, research contract with nonprofit institutions (including educational institutions).

In contracts of the kind described in the heading, which are executed using NASA Form 419S, the following clause shall be included in the contract.

DATA AND INSPECTION (JULY 1962)

The Government may publish, reproduce, and use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information, and other scientific data resulting from this contract. The Government has the right, at all reasonable times, to inspect or otherwise evaluate the work being performed under this contract.

§ 18–9.205 Contracts for acquisition of existing works.

§ 18–9.205–1 Off-the-shelf purchase of books and similar items.

Notwithstanding the instructions of any other paragraph of this Subpart, no contract clause contained in this Subpart need be included in contracts for the separate, sole procurement of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

§ 18–9.205–2 Contracts for existing motion pictures.

Contracts for the procurement of existing motion pictures or for the modification of existing motion pictures will be made only after consultation with legal counsel.

§ 18–9.206 Contracts to be performed outside the United States.

(a) Except as otherwise provided in §§ 18–9.204 and 18–9.205, the clause set forth below shall be included in all contracts under which (i) technical information including reports, drawings, blueprints, or other data is specified to be delivered to the Government, and (ii) the work is to be performed outside the United States, its possessions, or Puerto Rico, regardless of the place of delivery.

TECHNICAL INFORMATION (JULY 1962)

The Government may duplicate, use and disclose, in any manner for its Government purposes, including delivery to other governments for the furtherance of mutual defense of the United States Government and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor to the Government under this contract.

(b) The above clause may be modified by substituting "the United States Government" for "Government"; however, when the contractor is a foreign government, the above clause shall be modified by substituting "the United States Government" for "Government" and by substituting the name of the foreign government for "Contractor."

PART 18–10—BONDS AND INSURANCE

Subpart 18–10.1—Bonds

Sec.
18–10.100 Scope of subpart.
18–10.101 Definitions.
18–10.101–1 Bid bond.
18–10.101–2 Performance bond.
18–10.101–3 Payment bond.
18–10.101–4 Advance payment bond.
18–10.101–5 Patent infringement bond.
18–10.101–6 Construction contract.
18–10.102 Bid bonds.
18–10.102–1 Bid bonds on other than construction contracts.
18–10.102–2 Bid bonds on construction contracts.
18–10.103 Performance bonds.
18–10.103–1 Performance bonds for contracts other than construction contracts.
18–10.103–2 Performance bonds for construction contracts.
18–10.104 Payment bonds.
18–10.104–1 Payment bonds in connection with contracts other than construction contracts.
18–10.104–2 Payment bonds in connection with construction contracts.
18–10.105 Advance payment bonds.
18–10.106 Patent infringement bonds.
18–10.107 Other types of bonds.
18–10.108 Execution and administration of bonds.
18–10.108–1 Execution.
18–10.108–2 Administration of bonds.
18–10.108–3 Responsibility of contracting officers.
18–10.108–4 Bond forms.

Subpart 18–10.2—Sureties on Bonds

18–10.201 General requirements of sureties.
18–10.201–1 Corporate sureties.
18–10.201–2 Individual sureties.
18–10.201–3 Partnerships as sureties.
18–10.201–4 Substitution or replacement of a surety.
18–10.202 Options in lieu of sureties.
18–10.202–1 United States bonds or notes.
18–10.202–2 Certified or cashier's checks, bank drafts, money orders, or currency.
18–10.203 Consent of surety.
18–10.203–1 Forms.

Subpart 18–10.3—Insurance—General

18–10.300 Scope of subpart.
18–10.301 General.
18–10.301–1 Definition.
18–10.302 Notice of cancellation or change.
18–10.303 Responsibility for loss of or damage to Government property.
18–10.304 Insurance against loss of or damage to Government property.
18–10.305 Procedures to be followed in the event of loss of or damage to Government property.
18–10.350 Indemnification.

Subpart 18–10.4—Insurance Under Fixed-Price Contracts

18–10.400 Scope of subpart.
18–10.401 Policy.
18–10.402 Government-furnished property.
18–10.403 Workmen's compensation insurance overseas.

Subpart 18–10.5—Insurance Under Cost-Reimbursement Type Contracts

18–10.500 Scope of subpart.
18–10.501 Policy.
18–10.501–1 Workmen's compensation and employers' liability insurance.
18–10.501–2 General liability insurance.
18–10.501–3 Automobile liability insurance.
18–10.501–4 Aircraft public and passenger liability insurance.
18–10.501–50 Group insurance.
18–10.501–51 Use and occupancy insurance.
18–10.502 Self-insurance.
18–10.503 Government property.
18–10.550 Administration.

Subpart 18–10.6—Insurance of Industrial Facilities Under Leases or Facilities Contracts

18–10.600 Scope of subpart.
18–10.601 Responsibility for liabilities to third persons.
18–10.602 Responsibility for loss or damage to facilities.
18–10.602–1 Facilities contracts.

Subpart 18–10.50—Safety and Health

18–10.5000 Scope of subpart.
18–10.5001 Policy.
18–10.5002 Responsibility.
18–10.5003 Hazardous materials and operations.
18–10.5004 Contract provisions.

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Subpart 18–10.1—Bonds

§ 18–10.100 Scope of subpart.

This Subpart 18–10.1 sets forth the policies and procedures relating to bonds in connection with NASA contracts.

§ 18–10.101 Definitions.

(As used in this Subpart 18–10.1, the following terms have the meanings set forth in this section).

§ 18–10.101–1 Bid bond.

A bid bond is a bond accompanying a bid in which the obligor obligates himself in an amount stated (the penal sum), which obligation is to be void if (a) the bid is not withdrawn after the opening within the period specified in the bid, or, if no shorter period is specified, within 60 days; and (b) a written contract, with such bond or bonds as may be required is executed within 10 days after the prescribed forms are presented for signature.

§ 18–10.101–2 Performance bond.

A performance bond is a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements contained in the contract.

§ 18–10.101–3 Payment bond.

A payment bond is a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

§ 18–10.101–4 Advance payment bond.

An advance payment bond is a bond which secures the performance and the fulfillment of a contractual provision for the making of advance payments.

§ 18–10.101–5 Patent infringement bond.

A patent infringement bond is a bond which secures the performance and fulfillment of the undertakings contained in a patent clause.

§ 18–10.101–6 Construction contract.

The term construction contract means any contract for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It does not include any contract for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract as to payment or title.

§ 18–10.102 Bid bonds.

§ 18–10.102–1 Bid bonds on other than construction contracts.

Bid bonds may be required only when the solicitation of bids for a contract to be entered into as a result of formal advertising specifies that the contract is to be supported by a performance bond or by performance and payment bonds. When a bid bond is required, the penal sum thereof should not be less than the amount of the required performance or payment bond.

§ 18–10.102–2 Bid bonds on construction contracts.

A bid bond is required on any construction contract in excess of $2,000 entered into as a result of formal advertising, where the invitation for bids specifies that the contract shall be supported by performance and payment bonds. The penal sum of a bid bond shall be in an amount deemed adequate for the protection of the Government, ordinarily in the amount of 20 percent of the bid.

§ 18–10.103 Performance bonds.

§ 18–10.103–1 Performance bonds for contracts other than construction contracts.

(a) Generally, performance bonds will not be required in connection with other than construction contracts. Performance bonds shall not be used as a substitute for determinations of contractor responsibility as required by Subpart 18–1.9.

(b) Performance bonds may be required in individual procurements when the contracting officer determines in writing that the circumstances are such that a performance bond is necessary to protect the interest of the Government. Where such bonds are authorized, the penal sum will usually be no less than 20 percent and only rarely will it exceed 40 percent of the total amount of the contract.

(c) Performance bonds shall not be required unless the invitation for bids or request for proposals requires such a bond, or the requirement of such a bond is in the interest of the Government and not prejudicial to other bidders. The requirement for a performance bond shall not be waived when the invitation for bids requires such bond.

(d) When the contract terms contain a requirement for a performance bond but the bond is not furnished by the contractor within the time specified, the contracting officer shall notify the contractor that the contract will be terminated for default if the bond is not furnished within the time specified in the contract clause providing for such termination.

(e) Where a performance bond is required as a condition precedent to the formation of the contract but is not furnished within the time specified, if the making of the award can be delayed without prejudice to other bidders and to the public interest, the contracting officer shall notify the bidder that if the bond is not furnished within 10 days (or such other period as the contracting officer may specify) after receipt of the notice, his bid will not be considered for award.

§ 18–10.103–2 Performance bonds for construction contracts.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270(a)–270(e)), a performance bond is required on any construction contract exceeding $2,000 in amount. If the construction contract initially does not exceed $2,000 but is subsequently increased beyond $2,000, a performance bond will be required based on the total contract price as increased. Generally, the penal amount of each performance bond shall be 100 percent of the contract price at the time of award. But where the contracting officer finds that to require a 100 percent performance bond would be disadvantageous to the Government, he may prescribe a lesser penal amount.

(b) Additional performance bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if:

1. The modification is for new or additional work which is beyond the scope of the existing contract; or

2. The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the bond protection should generally be increased so that the total performance bond protection is 100 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided*, That lesser penal amounts may be authorized by the contracting officer as indicated in paragraph (a) of this section. The increased penal amount may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional performance bond from a new surety. See § 18–10.203 with respect to requiring consent of surety.

(c) The contracting officer may waive the requirement for a performance bond for that work under the contract which is to be performed in a foreign country provided he finds it impracticable for the contractor to furnish such bond. However, the authority available to the Military Departments to waive performance bonds under the Miller Act in cost-type contracts is not available at the present time to NASA.

§ 18–10.104 Payment bonds.

§ 18–10.104–1 Payment bonds in connection with contracts other than construction contracts.

The provisions of § 18–10.103–1 apply equally in the case of payment bonds. However, when a payment bond is required, the penal sum thereof shall be in an amount considered adequate by the contracting officer for the protection of the Government.

§ 18–10.104–2 Payment bonds in connection with construction contracts.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270(a)–270(e)), a payment bond is required in connection with any construction contract exceeding $2,000 in amount, in a penal sum as follows:

(1) When the contract price is not more than $1,000,000, the penal sum shall be 50 percent of the contract price;

(2) When the contract price is more than $1,000,000, but not more than $5,000,000, the penal sum shall be 40 percent of the contract price; and

(3) When the contract price is more than $5,000,000, the penal sum shall be $2,500,000.

(b) Additional payment bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a

bond is required pursuant to paragraph (a) of this section if:

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the additional bond protection should generally be such that the total payment bond protection is 50 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided,* That when the contract price as so revised is more than $1,000,000 but not more than $5,000,000, the total payment bond protection shall be in a penal amount of 40 percent of the revised contract price: *Provided further,* That when the contract price as so revised is more than $5,000,000, the total payment bond protection shall be in the penal amount of $2,500,000. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional payment bond from a new surety. See § 18–10.203 with respect to requiring consent of surety.

(c) The contracting officer may waive the requirement for a payment bond for that work under the contract which is to be performed in a foreign country provided he finds it impracticable for the contractor to furnish such bond. However, the authority available to the Military Departments to waive payment bonds under the Miller Act in cost-type contracts is not available at the present time to NASA.

§ 18–10.105 Advance payment bonds.

Generally, the security provisions of an advance payment agreement should make it unnecessary to require a bond to protect the interests of the Government. Advance payment bonds shall not be used without the approval of the Deputy Associate Administrator for Administration, who shall prescribe the penal sum thereof.

§ 18–10.106 Patent infringement bonds.

Patent infringement bonds are used in NASA contracts only in the limited conditions in which NASA uses a patent indemnity, as set forth in § 18–9.104, and then only if a performance bond has not been executed and if the financial responsibility of the contractor is unknown or doubtful. Such bonds shall be in a penal sum deemed adequate by the contracting officer for the protection of the Government.

§ 18–10.107 Other types of bonds.

Other types of bonds may be used only when, in the opinion of the Director of Procurement, such bonds are necessary or desirable in connection with the procurement of particular supplies and services.

§ 18–10.108 Execution and administration of bonds.

§ 18–10.108–1 Execution.

All bonds shall be executed in duplicate.

§ 18–10.108–2 Administration of bonds.

The Treasury Department list of corporate sureties certified by the Secretary of the Treasury as being acceptable as sureties on Federal bonds, and provision for the distribution of up-to-date copies of the list, are discussed in § 18–10.201–1. As stated therein, listing of a surety by the Treasury Department will be accepted as establishing the qualification of the surety within the limits specified. Upon receipt of the bonds required in connection with a NASA contract, the contracting officer shall determine whether the corporate surety which executed the bonds appears on the latest Treasury Department list of acceptable sureties. If the name of the surety does not appear on the list, the bonds shall be forwarded by letter to the Office of Procurement to determine from the Surety Bond Section, Treasury Department, whether the corporate surety has been approved subsequent to the issuance of the latest list. When the surety on a bond is not acceptable, the contracting officer shall return the bond to the bidder by letter, advising that the surety on the bond is not acceptable because of lack of Treasury Department approval. When time permits and when it would be to the best interest of the Government, the bidder may be permitted a specific period of time in which to submit an acceptable bond.

§ 18–10.108–3 Responsibility of contracting officers.

It is the responsibility of the contracting officer to obtain all bonds required by law and regulations.

§ 18–10.108–4 Bond forms.

Bond forms applicable to NASA procurements are listed in § 18–16.805.

Subpart 18–10.2—Sureties on Bonds

§ 18–10.201 General requirements of sureties.

Every bond required or used in connection with NASA procurements shall be supported by good and sufficient surety (corporate or individual).

§ 18–10.201–1 Corporate sureties.

In order to be acceptable, the corporate surety must have obtained from the Secretary of the Treasury authority to do business under the Act of August 13, 1894 (28 Stat. 279), as amended by the Acts of March 23, 1910 (36 Stat. 241), July 30, 1947 (61 Stat. 646), and the Act of August 9, 1955 (69 Stat. 620) (6 U.S.C. 6–13). A list of the corporations approved by the Secretary of the Treasury is published annually by the Treasury Department (T.D. Circular 570). This list indicates the maximum penal sum in which any corporate surety may underwrite any one obligation. Any corporation whose name is on this list is acceptable within the limits specified. The Director of Procurement will secure and distribute up-to-date copies of this list. When the bond is to be executed by two or more corporate sureties, Standard Form 27 should be used in the case of a performance bond, and Standard Form 27A in the case of a payment bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

§ 18–10.201–2 Individual sureties.

Individual sureties are acceptable for bid, performance or payment bonds: *Provided,* That (a) they are citizens of the United States, or, if given to secure a contract to be performed outside the United States, they shall be domiciled in such place, and (b) each individual surety will justify in an amount not less than the penal sum of the bond. When individual sureties are used, there shall be at least two responsible individuals on each bond and the liability of each individual surety shall extend to the entire penal amount of the bond. In connection with any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as a co-surety on the bond, provided that his net worth exclusive of his stockholdings in the corporation is equal to the amount for which he justified and that such fact is expressly stated in his affidavit of justification. Standard Form 28 should be used in connection with the justification of an individual surety.

§ 18–10.201–3 Partnerships as sureties.

A partnership or other unincorporated association as such, shall not be accepted as a surety. The individual members of the partnership or association may, if they meet the requirements of § 18–10.201–2, qualify as sureties. Individual members of a partnership or association shall not, however, be acceptable as sureties on bonds under which the partnership or association, or any co-partner or member thereof, is the principal obligor.

§ 18–10.201–4 Substitution or replacement of a surety.

In case of financial embarrassment, failure, or other disqualifying cause on the part of a surety under a bond, the contracting officer shall require the substitution of a new surety which is satisfactory to him.

§ 18–10.202 Options in lieu of sureties.

Any one or more of the sureties listed in § 18–10.202 may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Any such surety accepted by the contracting officer shall be promptly turned over to the fiscal officer concerned, and such security or its equivalent shall be returned to the contractor when the obligation of the bond has by its terms ceased.

§ 18–10.202–1 United States bonds or notes.

In accordance with the provisions of the Act of February 24, 1919, as amended (6 U.S.C. 15), and Treasury Department

Circular No. 154 (February 6, 1935), any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing United States bonds or notes in an amount equal at their par value to the penal sum of the bond together with an agreement authorizing the collection or sale of such United States bonds or notes in the event of default on the penal bond.

§ 18–10.202–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing a certified or cashier's check, a bank draft, a Post Office money order, or currency in an amount equal to the penal sum of the bond: *Provided,* That the penal sum of the bond is not in excess of $50,000. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the National Aeronautics and Space Administration.

§ 18–10.203 Consent of surety.

In connection with any amendment, modification, or supplemental agreement which would otherwise effect the release of a surety, the contracting officer shall obtain the written consent thereto of the surety or sureties on the existing bond or bonds (notwithstanding the fact that there may be an additional bond supported by a new surety): *Provided,* That no such consent need be obtained if there is an increased or additional bond supported by the same surety or sureties.

§ 18–10.203–1 Forms.

The following forms of consent of surety are authorized for use.

(a) Consent of surety to a modification providing for an increase in the penal sums of bonds previously given.

SURETIES ON BONDS

CONSENT OF SURETY

Date _____
Contract No. _____
Supplemental Agreement No. _____
Change Order No. _____

Consent of surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby. The principal and surety further agree that on and after the execution of this consent the penalty of the aforementioned performance bond or bonds is hereby increased by _____* dollars, and the penalty of the aforementioned payment bond or bonds is hereby increased by _____*

(Seal)

_____
(Individual principal)**

_____
_____
(Address)

_____
(Business address)

_____
(Corporate principal)**

_____
(Business address)

Attest:
_____

By _____
(Affix corporate seal)

_____
_____
(Corporate surety)

_____
(Business address)

_____

By _____
(Affix corporate seal)

_____

* The amount of increase entered will be at least in the same proportion that the penalty on the original bond bears to the contract price on the original contract. The penalty of the payment bond shall not be increased beyond $2,500,000.

** This consent shall be executed concurrently with the execution of the contract modification by the same person who executed the modification.

(b) *Consent of Surety where the penal sums of bonds previously given are not increased.*

CONSENT OF SURETY

Date _____
Contract No. _____
Supplemental Agreement No. _____
Change Order No. _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby.
Attest:

_____

_____
(Corporate surety)

_____
(Business address)

By _____
(Affix corporate seal)

Subpart 18–10.3—Insurance—General

§ 18–10.300 Scope of subpart.

This Subpart 18–10.3 sets forth the general principles and policy applicable to insurance under NASA contracts.

§ 18–10.301 General.

Insurance will be required where (a) it is mandatory by law, (b) it is considered desirable to utilize the facilities and services of the insurance industry, or (c), in special instances, it is considered necessary or desirable in connection with the performance of a contract. The Director of Procurement may authorize or require the purchase of insurance where commingling of property, circumstances of ownership, or degree of responsibility imposed by the contract makes the purchase of insurance reasonably necessary for the protection of the several interests concerned.

§ 18–10.301–1 Definition.

The term "insurance" includes but is not limited to the following forms of coverage, whether provided under an insurance policy issued by privately operated insurance companies or underwriters, or under a State-operated insurance fund, or under an approved self-insurance plan.

(a) Workmen's Compensation and Employers' Liability;
(b) General Liability;
(c) Automobile Liability;
(d) Aircraft Liability;
(e) Physical Damage (Property);
(f) Employees' Group Insurance (Life, Hospitalization, Accident and Health, Surgical, etc.); and
(g) Extrahazardous Accident.

§ 18–10.302 Notice of cancellation or change.

Where insurance is required by the contract, or required or approved under a contract by the Director of Procurement or his designee, the policies evidencing such insurance shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day written notice of cancellation or change is given to the Director of Procurement.

§ 18–10.303 Responsibility for loss of or damage to Government property.

NASA's policy with respect to Government assumption of risk for loss of or damage to Government property in the possession of contractors is set forth in §§ 18–13.104–1 and 18–13.411. This policy is implemented by the Government property clauses set forth in Subpart 18–13.5, and the facilities contract clauses set forth in Subpart 18–7.7. Except for advertised fixed-price contracts, and except in accordance with § 18–13.502–1 for fixed-price contracts under $25,000 where contractor responsibility for risk of loss or damage would not result in the inclusion of contingency charges in the contract, it is NASA policy to assume the risk of loss or damage. This policy is based on the principle that it is less costly for the Government to

act as a self-insurer than to permit the contractor to take out property damage insurance. However, when, due to the commingling of the Government's and the contractor's property, or for other reasons, relief of the contractor from liability will not result in a reduction of the contract price or contract cost to the Government, this policy may be waived and the contractor held fully responsible. Such a waiver, unless otherwise authorized by §§ 18–13.104 and 18–13.411, constitutes a deviation to be processed in accordance with § 18–1.109–3.

§ 18–10.304 Insurance against loss of or damage to Government property.

When insurance is required or approved to cover loss of or damage to Government property, such insurance may be provided either by specific insurance policies or by inclusion of such risks in the contractor's existing insurance policies. In either event, the insurance policies shall make formal disclosure of the Government's interest in the property.

§ 18–10.305 Procedures to be followed in the event of loss of or damage to Government property.

Upon the happening of loss of or damage to any Government property for which the contractor is relieved of responsibility by contract provision, the procedures set forth in the applicable "Government-Furnished Property" clause of the contract involved shall be followed.

§ 18–10.350 Indemnification.

(a) The indemnification authority available to the Military Departments under 10 U.S.C. 2354, which applies to contracts for research or development, is not applicable to contracts of NASA. Furthermore, the exercise of the broad authority contained in Public Law 85–804 (50 U.S.C. 1431–1435) is by Executive Order 10789 (November 14, 1958) made subject to the availability of funds, and, accordingly, provides no broad indemnification authority. Although limited indemnification arrangements may be legally possible, provided they are made subject to the availability of appropriations, it is NASA policy to avoid indemnification provisions. Moreover, in view of the narrow indemnification coverage which may legally be made available by NASA, there are few instances where providing such coverage is really of benefit to a contractor. No indemnification clause may be used in NASA contracts without the authorization of the Director of Procurement.

(b) An exception to the foregoing exists in connection with contracts employing nuclear material where, pursuant to a license obtained from the Atomic Energy Commission, indemnification authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq., as amended) may be extended to contractors engaged in work under the license.

Subpart 18–10.4—Insurance Under Fixed-Price Contracts

§ 18–10.400 Scope of subpart.

This Subpart 18–10.4 sets forth the policy of NASA with respect to insurance under fixed-price contracts of NASA.

§ 18–10.401 Policy.

Ordinarily, NASA is not concerned with the insurance programs of fixed-price contractors. However, NASA may be concerned with a contractor's insurance program where special circumstances exist. Examples of special circumstances are:

(a) Where the contractor is engaged principally in Government work;

(b) Where the contractor has a segregated operation which is engaged principally in Government work;

(c) Where Government-furnished property is involved;

(d) Where the work is performed within a Government establishment; and

(e) Where the Government may desire to assume risks for which the contractor ordinarily obtains commercial insurance.

§ 18–10.402 Government-furnished property.

The contractor's responsibilities for loss of or damage to Government-furnished property under fixed-price contracts are set forth in the applicable Government-Furnished Property clause (see § 18–13.502).

§ 18–10.403 Workmen's compensation insurance overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to any employee engaged in public work outside the United States. As used in this § 18–10.403, a public work contract includes any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal, or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the National Defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. The following clause shall be included in all construction contracts to be performed outside the United States.

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (APRIL 1960)

The Contractor before commencing performance under this contract shall provide and theretafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(b) Upon the recommendation of the Administrator, the Secretary of Labor may waive the applicability of the Act with respect to any contract, subcontract, or subordinate contract, work location under such contract, or classification of employees. Applications for waivers shall be submitted to the Administrator, through the Director of Procurement, together with an adequate statement justifying the need for such waiver.

Subpart 18–10.5—Insurance Under Cost-Reimbursement Type Contracts

§ 18–10.500 Scope of subpart.

This Subpart 18–10.5 sets forth the policy of NASA with respect to insurance under NASA cost-reimbursement type contracts.

§ 18–10.501 Policy.

The kinds of insurance listed in this § 18–10.501 shall ordinarily be required under cost-reimbursement type contracts and under those subcontracts where the provisions of the prime contract are extended to the subcontract. A program of self-insurance approved by the Director of Procurement or his designee, as provided in § 18–10.502, may be substituted for any of the kinds of insurance ordinarily required.

§ 18–10.501–1 Workmen's compensation and employers' liability insurance.

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. Related to workmen's compensation and included in the same insurance policy, are (1) Employers' Liability; (2) Workmen's Compensation for Occupational Disease; and (3) Employers' Liability for Occupational Disease.

(b) Workmen's compensation is an obligation imposed upon an employer by the workmen's compensation law of a State or by the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901). An employer subject to a workmen's compensation law can provide for his obligation by insuring either with a commercial insurance company or a State fund, or by self-insuring. In a few States, commercial insurance is not permitted and the State fund is the exclusive carrier. If the employer desires to self-insure, he must qualify himself as a self-insurer with the appropriate State authority. However, such approval is only one of the elements considered by NASA in its approval of a self-insurance plan. Information may be required as to the procedures followed in operating the self-insurance plan and the method of accruing the operating costs thereof prior to granting NASA approval of the self-insurance plan.

(c) Occupational disease insurance is related to workmen's compensation insurance, and is usually required under applicable law. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational diseases shall be required under the employers' liability section of the insurance policy. However, such additional insurance will not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage.

(d) Employers' liability is the liability imposed upon the employer by law for damages on account of personal injuries, including death resulting therefrom, sustained by his employees by reason of accidents.

(e) The insurance coverage with respect to employers' liability and occupational disease shall be required with a minimum limit of $100,000 per incident.

(f) With respect to workmen's compensation insurance overseas, pursuant to the Defense Base Act, as amended (42 U.S.C. 1651), the clause set forth in § 18–10.403(a) shall be included in all construction contracts, as defined in § 18–10.101–6, to be performed outside the United States.

§ 18–10.501–2 General liability insurance.

(a) Liability insurance, commonly referred to as third-party liability insurance, protects the insured against his liability to members of the public for bodily injury or death or for damage to or destruction of the property of others. An insurance policy may be obtained to insure the several general liability hazards separately or in various combinations. The advantage of a comprehensive general liability policy is that the insurance afforded protects the insured from loss arising from any cause other than those causes specifically excluded. This contrasts with the ordinary policy, which names the hazards insured against. In this manner the danger of "uninsured gaps" in the insured's insurance program is minimized. Comprehensive general (bodily injury) liability insurance shall be required with minimum limits of $50,000 per person and $100,000 per accident.

(b) Property damage liability insurance will be required only in special circumstances. Examples of such special circumstances are:

(1) Where a commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by a contractor in the course of his commercial operations; and

(2) Where the contractors are engaged in the handling of high explosives or in extrahazardous research and development activities undertaken in populated areas. Otherwise, prior approval for purchase of property damage liability insurance must be obtained from the Director of Procurement.

(c) The Government normally will assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause entitled "Insurance—Liability to Third Persons," contained in § 18–7.203–22.

§ 18–10.501–3 Automobile liability insurance.

(a) Automobile liability insurance shall be required on the comprehensive form of policy and shall provide for bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of a contract. Such insurance will protect the contractor against (1) his liability to members of the public because of bodily injury or property damage arising out of the operations, maintenance, or use of the insured vehicles; and (2) financial loss resulting from damage to and loss or destruction of insured vehicles.

(b) An insurance policy for automobiles can be written to apply to specific vehicles, classes of vehicles, or to all vehicles in which the insured may have an insurable interest. The comprehensive automobile liability policy is generally chosen by a contractor, since it can minimize the possibility of an uninsured loss. A comprehensive automobile liability insurance policy may or may not include coverage (comprehensive physical damage and collision) for damage to and loss or destruction of insured vehicles.

(c) Automobile bodily injury liability and property damage liability insurance shall be required with minimum limits of $50,000 per person and $100,000 per accident for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, non-owned, hired, and Government-furnished motor vehicles which will be used in the contract operations where use will not be limited exclusively to the premises on which the work under such contract is performed. Where such insurance relates to contracts to be performed outside the United States, its possessions, and Puerto Rico, the contracting office may revise downward the monetary limits prescribed herein. The Government shall normally assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause entitled "Insurance—Liability to Third Persons" contained in § 18–7.203–22.

§ 18–10.501–4 Aircraft public and passenger liability insurance.

(a) This type of insurance covers the liability imposed by law upon the aircraft owner and operator. The basic coverages are bodily injury liability, property damage liability, and passenger liability. Where aircraft are used in connection with the performance of a contract, aircraft liability insurance shall be carried by the contractor to cover bodily injury, including passenger liability (if the exposure exists), and property damage coverage. The minimum limits of liability shall be $50,000 per person and $100,000 per accident for bodily injury and $50,000 per accident for property damage. The Government will normally assume the risk of contractor's uninsured third-party liability to the extent provided for by the clause entitled "Insurance—Liability to Third Persons," contained in § 18–7.203–22.

(b) Aircraft hull insurance covers the insured for damage to or loss of the insured aircraft when loss or damage results from an insured peril. This type of insurance will not be purchased at Government expense to cover aircraft manufactured, modified, or serviced, under a cost-reimbursement type contract, against risks which are assumed by the Government under the "Government-Furnished Property" clause or other clauses in a contract. Such insurance is appropriate and will be required for aircraft not owned by the Government and used in connection with operations under a cost-reimbursement type contract.

§ 18–10.501–50 Group insurance.

(a) *General.* (1) Group insurance plans provide various types of benefits for employees and their dependents. Usually, these benefits are provided through one or more group insurance policies with life or casualty insurance companies. Also, these benefits may be provided through individual insurance policies or through hospital association plans.

(2) Group insurance plans are either contributory, where the employees and the contractor jointly pay the costs of the benefits, or noncontributory, where the total costs of the benefits are paid by the contractor. Some group insurance plans provide for hospital and surgical benefits for the dependents of employees, and under these plans the employee usually pays all or a portion of the cost. Employees are usually eligible to participate in group insurance plans after one to three months of service.

(3) It is recognized that group insurance plans providing life insurance, surgical, hospitalization, major medical, and nonoccupational accident insurance coverages are important to industrial relations programs. Considerations which influence the benefits and the costs for benefits under a particular group insurance plan are (i) the geographical locality of the operations of the contractor, (ii) wage levels, (iii) amount of other fringe benefits, (iv) benefits available under applicable workmen's compensation laws, (v) union negotiations, (vi) the costs of the group insurance benefits, and (vii) the effects of such costs in competitive prices.

(b) *Approval of group insurance plans.* The contracting officer will determine whether the group insurance benefits are reasonable in amonut and necessary in connection with the performance of NASA contracts. Such plans will generally be approved where they are comparable to those of competing employers or industries in the contractor's operational areas. Where a contractor is working primarily on Government contracts, the restraints imposed by competition may be lacking, and a careful review will be made, including a determination that the contractor does not furnish his employees greater benefits under cost-reimbursement type contracts than are granted his employees engaged in regular commercial operations of the contractor. In addition, the experience of the Military Departments or other Government agencies with the particular contractor shall be investigated. Changes in previously approved group insurance plans (including changes in premium rates) must be submitted for approval by the contracting officer.

(c) The contractor is required to credit to the NASA account a share of

all premium refunds or other credits paid or otherwise allowed to the contractor by the insurance company. This share shall be proportionate to the premium costs reimbursed under NASA contracts which gave rise to such refunds or other credits.

(d) The contractor is required to furnish full information concerning his group insurance program, and NASA reserves the right to examine the program at any time.

§ 18–10.501–51 Use and occupancy insurance.

(a) "Use and Occupancy" or "Business Interruption Insurance" is a form of insurance which indemnifies the contractor for certain losses incurred during a period of interruption or suspension of business operations resulting from physical damage to property essential to the conduct of business. Under such insurance, the contractor is protected against loss on account of fixed charges and other expenses which accrue during such period and for loss of net profit which the contractor is prevented from earning. The amount of coverage purchased under this form of insurance is based on the probable loss the contractor would sustain during the period of interruption or suspension of business operations. The premium charge is based on the aggregate indemnity under the policy.

(b) (1) When costs in connection with use and occupancy insurance are presented for allowance, the aggregate coverage available will be analyzed. Only that percentage of total insurance cost which is identifiable with insurance benefits determined to be acceptable within the intent of paragraph (b) (2) of this section will be allowed.

(2) Costs of insuring those items of fixed charges and other expenses which are allowable items of costs in NASA contracts will be considered allowable. Such fixed charges and other expenses include but are not limited to salaries of employees under contract and other key employees, rents, most insurance premiums, and charges for noncancellable contracts for light, heat, or power.

(3) The cost of insuring the net profit a contractor is prevented from earning during a period of business interruption or suspension is unallowable. Similarly, the costs of insuring certain items of fixed charges such as interest, Federal income taxes, donations, and certain advertising expenses are unallowable.

§ 18–10.502 Self-insurance.

Self-insurance may be approved by the contracting officer in lieu of the insurance requirement for one or more of the mandatory coverages required by §§ 18–10.501–1, 18–10.501–2, 18–10.501–3, and 18–10.501–4, *Provided*, That:

(a) The contractor has maintained the practice of self-insurance in respect to such coverage or risk for a period of not less than 3 years;

(b) Adequate safety inspection and engineering programs are carried on by the contractor;

(c) The contractor has an effective and established policy for claims investigation;

(d) The contractor has established a plan of funding so that the annual cost of "loss payments" remains reasonably constant;

(e) The charges to be made against the contract for the cost of the self-insurance program may reasonably be expected to be less than the charge for an equivalent program of insurance; and

(f) The Government contracts will share equitably in any release of reserve funds.

Self-insurance programs which do not meet the foregoing conditions shall be submitted for approval to the Director of Procurement.

§ 18–10.503 Government property.

The contractor's responsibility for loss of or damage to Government property under cost-reimbursement type contracts is set forth in the applicable Government property clause.

§ 18–10.550 Administration.

(a) In approving a contractor's insurance program under a cost-reimbursement contract, it is desirable to determine whether this program is identical with a program already approved in connection with similar contracts with the Military Departments or other Government agencies. The possibility of combining insurance coverage under the NASA contract with insurance pertaining to contracts with such other agencies, thereby effecting savings in reimbursable insurance premium costs, should be explored.

(b) Where minimum limits are prescribed in this subpart, higher limits may be approved by the contracting officer where the circumstances so justify. Interference with a contractor's established commercial insurance program should be avoided to the maximum extent possible. Where NASA contract operations are commingled with a contractor's commercial operations, all operations should normally be insured together.

Subpart 18–10.6—Insurance of Industrial Facilities Under Leases or Facilities Contracts

§ 18–10.600 Scope of subpart.

This Subpart 18–10.6 sets forth NASA policy with respect to insurance of industrial facilities held by a contractor.

§ 18–10.601 Responsibility for liabilities to third persons.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the Department concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the same manner and to the same extent as required in § 18–10.501.

§ 18–10.602 Responsibility for loss or damage to facilities.

§ 18–10.602–1 Facilities contracts.

Facilities contracts shall provide that the contractor shall not include the cost of insurance in any contract except to the extent of insurance required or approved by NASA or the Department or agency concerned. If a facilities contract or lease does not restrict the use of the facilities to work performed for the Government, provision shall be made that the contractor shall procure and maintain insurance as NASA or the Department or agency concerned may require against loss or damage to the industrial facilities (see § 18–13.411).

Subpart 18–10.50—Safety and Health

§ 18–10.5000 Scope of subpart.

This Subpart 18–10.50 sets forth the policy, responsibility, and requirements for contract provisions relating to NASA's Safety and Health Programs and implements NASA Management Instruction 23–1–6A.

§ 18–10.5001 Policy.

It is NASA policy that contractors and subcontractors will:

(a) Protect the life and health of NASA and contractor employees during their work on NASA programs;

(b) Avoid accidental work interruptions which could delay NASA programs;

(c) Prevent damage to property supplies and equipment;

(d) Assure proper protection of the public from hazards introduced by NASA contractors and subcontractors; and

(e) Provide data whereby risks and loss factors in space technology related to NASA programs can be accumulated and evaluated.

§ 18–10.5002 Responsibility.

(a) *Safety officer.* The Safety Officer will advise and assist the contracting officer in:

(1) Evaluating prospective contractors' safety and health programs pursuant to Subpart 18–1.9;

(2) Determining whether safety and health provisions should be included in a proposed procurement; and

(3) Selecting contract provisions which define the safety and health requirements applicable to a particular contract.

(b) *Contracting officer.* The contracting officer will obtain the advice, assistance, and recommendations from the safety officer in the following proposed procurements:

(1) Construction of facilities on Government installations;

(2) Manufacture of boosters, engines, liquid and solid fuels, oxidizers, and/or propellants;

(3) Transportation of fuels, oxidizers, space-related chemicals, and other hazardous materials; and

(4) Research, development or test of engines, related components and propellants which involve hazardous operations or the use of hazardous materials.

§ 18–10.5003 Hazardous materials and operations.

Hazardous materials and operations for the purpose of this subpart are those involved in or concerned with nonnuclear detonations and explosions (e.g., overpressures, fireballs, and fragmentation), fire and heat, acoustics, toxicity, nuclear radiation, electromagnetic radiation, light, fuels, acids, propellants, and environmental factors.

§ 18–10.5004 Contract provisions.

General safety and health requirements will be prescribed by the safety officer as set for in § 18–10.5002(a)(3). The following clause may be used as a guide:

SAFETY AND HEALTH (FEBRUARY 1964)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards:

(Insert the standards, codes, criteria prescribed by the Safety Officer)

Further, the Contractor shall take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary provided, that if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause of this contract entitled "Changes."

(b) Prior to commencement of work the Contractor will submit in writing his plan for complying with the Safety and Health provisions of this contract, and will meet with the representative of the Contracting Officer to discuss and develop mutual understandings relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor shall comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in such manner as the Contracting Officer may prescribe all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to property, materials, supplies and equipment incident to work performed under the contract.

(e) The Contracting Officer will notify the Contractor of any noncompliance with the provisions of this clause and corrective action to be taken. The Contractor shall, after receipt of such notice, immediately take such corrective action. (Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose.) If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

PART 18–11—FEDERAL, STATE, AND LOCAL TAXES

Sec.
18–11.000 Scope of part.
18–11.001 Resolution of tax problems.

Subpart 18–11.1—Federal Excise Taxes

18–11.100 Scope of subpart.
18–11.101 Retailers excise taxes.
18–11.101–1 Jewelry and related items.
18–11.101–2 Furs.
18–11.101–3 Toilet preparations.
18–11.101–4 Luggage and handbags.
18–11.101–5 Special fuels (diesel fuel, benzol, benzene, naphtha, liquefied petroleum gas, and certain other liquid fuels).
18–11.102 Manufacturers excise taxes.
18–11.102–1 Motor vehicles.
18–11.102–2 Tires and tubes.
18–11.102–3 Gasoline.
18–11.102–4 Lubricating oils.
18–11.102–5 Household type equipment (refrigerators, self-contained air conditioning units, electric, gas, and oil appliances, and electric light bulbs and tubes).
18–11.102–8 Radio and television receiving sets, phonographs and records, and musical instruments.
18–11.102–10 Photographic equipment.
18–11.102–11 Firearms, shells, and cartridges.
18–11.102–12 Business machines.
18–11.102–13 Pens, mechanical pencils, and lighters.
18–11.102–14 Matches.
18–11.103 Excise taxes on facilities and services.
18–11.103–1 Communications.
18–11.103–2 Transportation of persons.
18–11.104 Use tax on highway motor vehicles.
18–11.105 Selective list of supplies and services subject to Federal excise taxes.

Subpart 18–11.2—Exemptions From Federal Excise Taxes

18–11.200 Scope of subpart.
18–11.201 Supplies for exportation or shipment to a possession or to Puerto Rico.
18–11.201–1 Retailers excise taxes.
18–11.201–2 Manufacturers excise taxes.
18–11.201–50 Method of qualification for exemption for sales for export, or shipment to a possession or to Puerto Rico.
18–11.202 Supplies and services for the exclusive use of the United States.
18–11.203 Supplies sold for further manufacture.
18–11.205 Exemptions from other Federal taxes.
18–11.206 Tax exemption forms.

Subpart 18–11.3—State and Local Taxes

18–11.301 Applicability.
18–11.302 Tax exemption forms.

Subpart 18–11.4—Contract Clauses

18–11.401 Fixed-price type contracts.
18–11.401–1 Clause for advertised and certain negotiated contracts.
18–11.401–2 Alternate clause for certain negotiated contracts.
18–11.402 Cost-reimbursement type contracts.

AUTHORITY: The provisions of this Part 18–11 issued under 42 U.S.C. 2473(b)(1).

§ 18–11.000 Scope of part.

This Part 18–11 deals with Federal taxes imposed by the Internal Revenue Code upon certain supplies and services procured by NASA, exemptions from such Federal taxes, and policy for obtaining exemptions from State and local taxes. Except as otherwise indicated, references are to the Internal Revenue Code of 1954 (26 U.S.C.). (References to the Internal Revenue Code of 1939 are for convenience in disposing of cases to which the Internal Revenue Code of 1954 is not applicable.)

§ 18–11.001 Resolution of tax problems.

(a) It is essential that uniform and consistent tax policies and procedures be maintained throughout NASA and that NASA effectively cooperate with other Government agencies on tax matters of mutual interest. Except as provided in § 18–11.302(b), the General Counsel, NASA Headquarters, will represent NASA in all negotiations with Federal, State, or local authorities, for the purpose of determining the applicability of, or for obtaining exemption from, or refund of, any tax. The General Counsel shall keep the Director of Procurement fully informed of the status of any such negotiations.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to

the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to this Part shall be forwarded to the General Counsel. The forwarding of tax problems to the General Counsel is particularly important where:

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition, or potential imposition, of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence;

(2) A copy of the contract;

(3) A thorough review of the legal issues involved and recommended action to be taken; and

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures, with recommendations.

(f) The initiating office shall furnish an information copy of any submission (and the General Counsel shall furnish a copy of his reply) to the Director of Procurement.

Subpart 18–11.1—Federal Excise Taxes

§ 18–11.100 Scope of subpart.

This subpart 18–11.1 deals with Federal excise taxes imposed by the Internal Revenue Code upon certain supplies and services which are procured by NASA. The availability of exemptions from these taxes is set forth in Subpart 18–11.2. It should be noted that the scope and rates of these taxes are subject to change from time to time by amendments to the Internal Revenue Code and Treasury Regulations.

§ 18–11.101 Retailers excise taxes.

Chapter 31 of the Internal Revenue Code (which supersedes Chapters 9A, 19, and 20, I.R.C. 1939), as implemented by Treasury Regulations 51 and 119, imposes retailers excise taxes upon various types of supplies, enumerated in § 18–11.101–1 through § 18–11.101–5, sold at retail. The tax is not imposed on sales for resale. The sale of taxable supplies to the Government for use or consumption is a taxable retail sale. In general, the tax attaches at the time title passes from the seller and is based on the sale price. A lease of supplies is treated as a sale for the purpose of these taxes, in which event the tax is measured by the rental payments. The sale (or rental) price:

(a) Excludes the retailers excise tax itself, whether or not separately stated;

(b) Excludes, if separately stated, any retail sales tax imposed by any State or political subdivision thereof, or the District of Columbia, irrespective of whether liability for such tax is imposed on the vendor or vendee;

(c) Includes any charges for packaging or packaging materials; and

(d) Excludes all other service charges, such as for transportation, delivery, insurance, and installation.

If, after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also shall be adjusted by credit or refund. The retailer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment.

§ 18–11.101–1 Jewelry and related items.

See 32 CFR 11.101–2 or FPR 1–11.101–1.

§ 18–11.101–2 Furs.

See 32 CFR 11.101–3 or FPR 1–11.101–2.

§ 18–11.101–3 Toilet preparations.

See 32 CFR 11.101–4 or FPR 1–11.101–3.

§ 18–11.101–4 Luggage and handbags.

See 32 CFR 11.101–5 or FPR 1–11.101–4.

§ 18–11.101–5 Special fuels (diesel fuel, benzol, benzene, naphtha, liquefied petroleum gas, and certain other liquid fuels).

When required by the contractor, evidence of a nontaxable use of a special fuel may be provided by executing the certificates set forth in § 18–11.206(a). These exemptions shall be taken whenever their use appears economically advantageous. They shall be taken by adjustment of contract price or purchase on a tax-exclusive basis. If fuel which has been procured tax-free is used for a taxable purpose, the installation so using the fuel must make quarterly payment of the tax directly to the Internal Revenue Service on TD Form 720, "Quarterly Federal Excise Tax Return."

§ 18–11.102 Manufacturers excise taxes.

Chapter 32 of the Internal Revenue Code imposes manufacturers excise taxes upon various types of supplies sold by a manufacturer, producer, or importer. In general, the tax attaches when title passes from the manufacturer. The amount of the tax is based on the amount of the sale price. A lease of supplies is treated as a sale for the purpose of these taxes, in which event the tax is measured by the rental payments until such payments equal the price or fair value of the article. (However, see § 18–11.102–12 with respect to lease of business machines by the Government.) The sale price or rental payment excludes the tax itself and all service charges connected with the sale, such as transportation, delivery, insurance, or installation charges. However, charges for packaging materials are included. If, after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also should be adjusted. The manufacturer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment. Articles subject to the retailers excise tax on jewelry (see § 18–11.101–1) are not subject to manufacturers excise taxes, except any clock or watch, or any case or movement for a clock or watch, sold as a part or accessory, or sold on or in connection with or with the sale of any article.

§ 18–11.102–1 Motor vehicles.

A tax at the rates indicated is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Chassis and bodies of trucks, buses, truck and bus trailers and semitrailers, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer—10 percent; except that this tax does not apply to equipment designed for off-the-road use, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms (a sale of a truck, bus, automobile, truck or bus trailer or semitrailer, and trailer or semitrailer is considered to be a sale of the chassis and the body thereof);

(b) Chassis and bodies of automobiles, and trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—7 percent (a sale of a truck, bus, automobile, truck or bus trailer or semitrailer, and trailer or semitrailer is considered to be a sale of the chassis and the body thereof); and

(c) Parts or accessories when sold separately from an automobile, truck, or other item taxable as indicated in subparagraphs (a) and (b) of this paragraph—5 percent; parts or accessories are defined to include any article—

(1) The primary use of which is to improve, repair, replace, or serve as a component part of a motor vehicle;

(2) Designed to be attached to or used in connection with a motor vehicle or to add to its utility or ornamentation; or

(3) The primary use of which is in connection with a motor vehicle whether or not essential to its operation or use.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, a taxable motor vehicle, are treated as parts or accessories whether or not primarily adapted for such use. However, the term "parts or accessories" does not include tires, inner tubes, or automobile radio and television receivers. The tax on parts or accessories does not apply to any article sold for use (or for a single resale for use) as material in the manu-

facture of, or as a component part of, any article, whether or not such article is subject to a manufacturers excise tax. The contract price of supplies purchased by NASA shall not include an amount for the manufacturers excise tax on automotive parts or accessories purchased for use in the manufacture of any article.

§ 18–11.102–2 Tires and tubes.

See 32 CFR 11.102–3 or FPR 1–11.102–2.

§ 18–11.102–3 Gasoline.

See 32 CFR 11.102–4 or FPR 1–11.102–3. The rate of tax is 4 cents per gallon. Refunds referred to in 32 CFR Chapter 1 and FPR will not be claimed.

§ 18–11.102–4 Lubricating oils.

(a) A tax at the indicated rates is imposed upon the following classes of lubricating oils sold, other than to another manufacturer or producer for resale, by a manufacturer or producer (but not upon oil sold by an importer):

(1) Cutting oils, which means oils sold for use in cutting and machining operations, including forging, drawings, rolling, shearing, punching, and stamping on metals—3 cents per gallon; and

(2) Other lubricating oils, which means all oils, regardless of origin, which are sold as lubricating oil or are suitable for use as a lubricant, not including products commonly known as grease—6 cents per gallon. Certain products other than those commonly known as grease are not considered to be lubricating oils, and accordingly are not subject to the tax. These include petrolatum and fatty oils of vegetable, animal, fish, and marine origin which in their natural state are not sold as lubricating oils.

(b) An exemption is available for lubricating oils sold by a manufacturer directly to a purchaser who uses the oil for nonlubricating purposes. In applying this exemption, oils can be grouped into two classes:

(1) Oils which are exempted if the manufacturer obtains an exemption certificate from the purchaser in the form prescribed by the Treasury Regulations; and

(2) Oils which are exempted without an exemption certificate. Oils of this class include crude neatsfoot oil; electrical transformer insulating oil; white oil; and lubricating oils which are packaged in sealed containers of one gallon or less, labeled and sold for nonlubricating purposes.

(c) With the exception of oils which are packaged in sealed containers of one gallon or less, labeled and sold for nonlubricating purposes, oils of neither class may be sold tax-free to dealers for resale even though it is known that the oil will be used for nonlubricating purposes. If, however, oil upon which a tax has been paid is used for nonlubricating purposes, the manufacturer is entitled to a refund or credit, irrespective of whether the oil was sold directly to the consumer by the manufacturer or was sold through a dealer. A refund or credit is also allowed when lubricating oil, upon which the 6-cent-per-gallon tax has been paid, is used as a cutting oil taxable at 3 cents per gallon. An exemption certificate is available when lubricating oils are sold by the manufacturer for nonlubricating purposes: *Provided*, That (1) the manufacturer has definite knowledge, prior to or at the time of sale, that the product is purchased for such purposes, and (2) an appropriate certificate is furnished the manufacturer. The format of an exemption certificate for this purpose is set forth in § 18–11.206(b). An exemption certificate is also available when lubricating oils are sold by the manufacturer for use in cutting and machining operations on metals. This certificate is required to be furnished to the manufacturer to enable him to sell the oil subject to tax at the 3-cent rate rather than the 6-cent rate. The format of the exemption for this purpose is set forth in § 18–11.206 (c). These exemptions will be used in any case in which such use appears advantageous by a tax-exclusive purchase.

§ 18–11.102–5 Household type equipment (refrigerators, self-contained air conditioning units, electric, gas, and oil appliances, and electric light bulbs and tubes).

See 32 CFR 11.102–6.

§ 18–11.102–8 Radio and television receiving sets, phonographs and records, and musical instruments.

No tax is imposed upon these articles if they are communication, detection, or navigation equipment of the type used in commercial, military, or marine installations. For any other type of purchase in this category, see 32 CFR 11.102–7 and 11.102–8, and FPR 1–11.102–8.

§ 18–11.102–10 Photographic equipment.

See 32 CFR 11.102–10 and FPR 1–11.102–10.

§ 18–11.102–11 Firearms, shells, and cartridges.

See 32 CFR 11.102–11 and FPR 1–11.102–11.

§ 18–11.102–12 Business machines.

See 32 CFR 11.102–12.

§ 18–11.102–13 Pens, mechanical pencils, and lighters.

See 32 CFR 11.102–13 and FPR 1–11.102–13.

§ 18–11.102–14 Matches.

See 32 CFR 11.102–14 and FPR 1–11.102–14.

§ 18–11.103 Excise taxes on facilities and services.

See 32 CFR 11.103 and FPR 1–11.103.

§ 18–11.103–1 Communications.

See FPR 1–11.103–1.

§ 18–11.103–2 Transportation of persons.

See FPR 1–11.103–2.

§ 18–11.104 Use tax on highway motor vehicles.

See 32 CFR 11.104.

§ 18–11.105 Selective list of supplies and services subject to Federal excise taxes.

See FPR 1–11.105.

Subpart 18–11.2—Exemptions From Federal Excise Taxes

§ 18–11.200 Scope of subpart.

This Subpart 18–11.2 sets forth the applicability and scope of general exemptions, credits, and refunds from the Federal excise taxes outlined in 32 CFR Part 11, Subpart A and in FPR 1–11.1 (which are incorporated by reference in Subpart 18–11.1), and the policy governing when such exemptions, credits, and refunds are to be claimed.

§ 18–11.201 Supplies for exportation or shipment to a possession or to Puerto Rico.

Exemption is available from the retailers and manufacturers excise taxes on the sale of supplies for export or for shipment to a possession of the United States or to Puerto Rico.

§ 18–11.201–1 Retailers excise taxes.

Pursuant to Section 4056 of the Internal Revenue Code (which supersedes Section 2406, I.R.C. 1939) and applicable Treasury Regulations, exemption is available from the retailers excise taxes on sales of supplies for export or for shipment to a possession of the United States or to Puerto Rico. This exemption shall be utilized by purchasing on a tax-exclusive basis and furnishing the required proof of exportation, or shipment to a possession or to Puerto Rico, if (a) the purchase is substantial, and (b) exportation, or shipment to a possession or to Puerto Rico, is intended to follow not more than 6 months after title passes to the Government.

§ 18–11.201–2 Manufacturers excise taxes.

Pursuant to Section 4221 of the Internal Revenue Code (which supersedes Sections 3449 and 2705, I.R.C. 1939) and applicable Treasury Regulations, exemption is available from the manufacturers excise taxes on sales of supplies for export, or for shipment to a possession of the United States or to Puerto Rico. This exemption shall be obtained only when (a) the purchase is substantial, and (b) exportation, or shipment to a possession or to Puerto Rico, is intended to follow not more than 6 months after title passes to the Government. This exemption is limited to sales by a manufacturer, and is not applicable to sales for export, or shipment to a possession or to Puerto Rico, from the stock of a dealer who was not the manufacturer producer, or importer.

§ 18–11.201–50 Method of qualification for exemption for sales for export, or shipment to a possession or to Puerto Rico.

(a) In order to qualify for the exemption of sales for export, or for shipment to a possession or to Puerto Rico,

the two conditions in subparagraphs (1) and (2) of this paragraph must be met.

(1) The supplies must be certified as having been sold by the manufacturer (if the tax is a manufacturers excise tax) or the retailer (if the tax is a retailers excise tax) for export, or shipment to a possession or to Puerto Rico. The words "for export, or shipment to a possession or to Puerto Rico," incorporated into or stamped on a contract or purchase order is acceptable to the Internal Revenue Service as satisfactory evidence that the sale has been made for export or for shipment to a possession or to Puerto Rico.

(2) The supplies must be exported, or shipped to a possession or to Puerto Rico, in due course. The responsible officer at the port of embarkation will furnish a certificate of export, or shipment to a possession or to Puerto Rico, to the contracting officer, together with a statement of where the shipping documents are being retained. Proof of the export or shipment shall be furnished by the contracting officer to the contractor in the following form:

CERTIFICATE OF EXPORT OR SHIPMENT TO A POSSESSION OR TO PUERTO RICO

---------- 19--

(Name of Contractor)

The undersigned does hereby certify that ----------

(Quantity and description of supplies)

which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under Contract No. ----------, were in fact exported to a foreign country or shipped to a possession of the United States or to Puerto Rico, and a copy of the export bill of lading No. ---------- or loading manifest No. ---------- pursuant to which the supplies were shipped, is being retained in the files of----------

---

(Official address of office)

(Signed)

(Title)

(Official address)

(b) The intention to export, or to ship the supplies to a possession or to Puerto Rico, should be specified in the contract or by amendment thereto. If such specification is included initially in a fixed-price contract, the contract price must exclude the retailers or manufacturers excise tax; if such specification is included by an amendment to the contract, a downward adjustment of the contract price may be required, particularly if the contract contains the Federal, State, and Local Taxes clause.

§ 18–11.202 Supplies and services for the exclusive use of the United States.

(a) By virtue of action taken by the Secretary of the Treasury, pursuant to Sections 4293 and 4483 of the Internal Revenue Code, exemption is available, and shall be obtained to the extent indicated, from the following Federal excise taxes:

(1) The tax on communication services and facilities furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government;

(2) The tax on transportation of persons for transportation furnished the United States upon a Government transportation request;

(3) The tax on the rental of business machines (see § 18–11.102–12);

(4) The tax on transportation of property for which a Government bill of lading has been issued; and

(5) The tax on the use of highways by vehicles used by the United States whether or not such vehicles are owned by the United States. Vehicles leased to the United States and operated by Government personnel are considered to be in use by the United States and are thus exempt; vehicles operated by a Government contractor's personnel are not exempt whether such vehicles are Government-owned or not.

(b) The exemption from the tax on communication services furnished the Government is obtained by excluding it from the price. This exemption is not available when communication or transportation services are furnished directly to Government contractors. Exemption from the tax on transportation of persons is obtained without use of exemption certificates by use of a Transportation Request (Standard Form 1169). The exemption from the tax on business machine rental requires following the procedures specified in § 18–11.102–12. Exemption from the tax on transportation of property is obtained without use of exemption certificates by use of a U.S. Government Bill of Lading (Standard Form 1103). Exemption from the Highway Use Tax is available to the United States without any action on its part with regard to Government-owned vehicles. Exemption with regard to vehicles leased to the United States is available to the lessor only if the vehicle in question has had a tax-free use throughout the current fiscal year. This exemption shall be taken, to the extent feasible, by leasing on a tax-exclusive basis.

§ 18–11.203 Supplies sold for further manufacture.

(a) Pursuant to Section 4221 of the Internal Revenue Code (which supersedes Section 3442, I.R.C. 1939) and applicable Treasury Regulations, supplies (other than tires, inner tubes, and automobile radios and television receivers) are exempt from manufacturers excise taxes if sold for use by the vendee in the manufacture of, or as a component part of, another article; or for resale by the vendee for such further manufacture by his vendee, if the article is resold in due course. In applying this exemption, there are two classes of supplies:

(1) Automobile parts or accessories, refrigerator components, radio or television components, and camera lenses, the sale of which is exempt whether or not the article to be manufactured is subject to a manufacturers excise tax. (The manufacturer is entitled to a credit or refund for the amount of the tax paid on such parts, accessories, components, or lenses if this exemption has not been utilized and if such parts, accessories, components, or lenses upon which a manufacturers excise tax has been paid are used in the manufacture of, or as a component part of, any article, whether or not taxable.);

(2) All other articles (other than tires, inner tubes, automobile radio and television receivers) subject to manufacturers excise tax, the sale of which is exempt only if the article to be manufactured is subject to a manufacturers excise tax. (The manufacturer is entitled to a credit or refund of the amount of tax paid on any such article used for further manufacture if this exemption has not been utilized and if such article, upon which a manufacturers excise tax has been paid, is used in the manufacture of, or as a component of, another article upon which a manufactures excise tax is subsequently paid, or which subsequently is sold tax-free as a sale for further manufacture pursuant to Section 4221 of the Internal Revenue Code.)

(b) These exemptions, credits, and refunds under paragraph (a) (1) and (2) of this section are obtainable by the manufacturer without any action by the contracting officer. The contract price for supplies shall not include an amount for any manufacturers excise tax from which these exemptions, credits, or refunds are available.

§ 18–11.205 Exemptions from other Federal taxes.

Distilled spirits and alcohol. Distilled spirits of 160 degrees or more proof alcohol, and specially denatured alcohol, may be withdrawn tax-free by the United States or any Government agency thereof.

(a) The authority to sign applications to the Treasury Department, Commissioner of Internal Revenue, for permits to procure, tax-free, spirits and specially denatured alcohol (TD Form 1444, "Alcohol for Use of United States," and TD Form 1486, "Specially Denatured Alcohol for Use of United States") has been delegated by the Administrator to certain officers of NASA installations.

(b) TD Forms 1444 and 1486 shall be submitted to the Treasury Department in accordance with the instructions printed thereon. The letter of transmittal shall contain the following information:

(1) That the appropriate form is submitted in triplicate according to Internal Revenue Regulations for permit to procure tax-free or specially denatured alcohol;

(2) Name and location of supplier;

(3) Name and location of consignee;

(4) Purpose for which alcohol will be used; and

(5) Address to which permit is to be sent (requesting installation).

§ 18–11.206 Tax exemption forms.

Tax exemption certificates which may be reproduced locally are to be utilized in the following forms, as applicable.

(a) *Special fuel exemption certificates.* The form of exemption certificate to be used is shown as follows:

EXEMPTION CERTIFICATE

Certificate Serial No. ----------

(For use by purchasers of diesel fuel, benzol, benzene, naphtha, liquefied petroleum gas, or other taxable liquid, for other than as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and otherwise than in the manufacture or production of such fuel.)

(Date)

Contract No.:
Contractor:
Product:
End Use:

The undersigned hereby certifies that he is officially authorized to issue tax exemption certificates for the National Aeronautics and Space Administration under the above-described contract and that the product indicated above, being purchased under said contract, will not be used as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and will not be used in the manufacture or production of such fuel, but will be used for the purpose shown.

The undersigned understands that if the benzol, benzene, naphtha, or other taxable liquid is used, sold, or otherwise disposed of except as above stated, the National Aeronautics and Space Administration will be liable for the tax upon such use, sale, or other disposition of such product. It is understood that the fraudulent use of this certificate to secure exemption will subject all guilty parties to a fine of not more than $10,000 or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The undersigned also understands that the Government must be prepared to establish by competent evidence that the product was actually used for the purpose or purposes for which purchased as stated in this certificate.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contract period ----------.
By ----------
Name
Title
Address
Identification Card No.

(b) *Lubricating oils exemption certificates.* The exemption certificate to be used is shown as follows:

EXEMPTION CERTIFICATE

Certificate Serial No. ----------

(For use by purchasers of lubricating oil for nonlubricating purposes.) ----------
(Date)

Contract No.:
Contractor:
Product:
End Use:

The undersigned hereby certifies that he is officially authorized to issue tax-exemption certificates for the National Aeronautics and Space Administration under the above-described contract, and that the product indicated above, being purchased under said contract, will not be used or resold for lubrication, but will be used for the purpose shown.

The undersigned understands that if the nonlubricating oil is used, sold, or otherwise disposed of except as above stated, he is required to notify the manufacturer. It is understood that the fraudulent use of this certificate to secure exemption will subject all guilty parties to a fine of not more than $10,000 or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The undersigned also understands that the Government must be prepared to establish by competent evidence that the product was actually used for the purpose or purposes for which purchased as stated in this certificate.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contract period ----------.
By ----------
Name
Title
Address
Identification Card No.

(c) *Cutting oil certificates.* The exemption certificate to be used is shown as follows:

EXEMPTION CERTIFICATE

Certificate Serial No. ----------

(Date)

Contract No.:
Contractor:
Product:
End Use:

The undersigned hereby certifies that he is officially authorized to issue tax-exemption certificates for the National Aeronautics and Space Administration under the above-described contract, and that the product indicated above, being purchased under said contract, is purchased for the following use as a lubricant in cutting and machining operations on metals:

The undersigned understands that the National Aeronautics and Space Administration must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that upon his use of the oil for a lubricating purpose other than in cutting and machining operations on metals, or upon his sale or other disposition of oil, he is required to notify the manufacturer.

The undersigned understands that he and all guilty parties will, for fraudulent use of this certificate for the purpose of purchasing oil subject to tax at the rate of 3 cents a gallon, rather than 6 cents a gallon, be subject to a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contract Period ----------
By ----------
Name
Title
Address
Identification Card No.

(d) Where only occasional purchases of cutting oil or lubricating oil for nonlubricating use are made, a separate certificate is required for each order. However, when such purchases are frequent, a certificate covering all orders for a specified period not to exceed 4 calendar quarters will be acceptable.

Subpart 18–11.3—State and Local Taxes

§ 18–11.301 Applicability.

As a general rule, Government purchases are exempt from State and local taxes. This exemption shall be made use of to the fullest extent available, by means of purchase on a tax-exclusive basis and execution of an approved tax exemption certificate.

§ 18–11.302 Tax exemption forms.

(a) When a State or local sales tax attaches at the time of a sale to the United States and the vendor sells to the United States at a price which is exclusive of the tax, Standard Form 1094 shall be furnished to the vendor where the vendor or dealer requires evidence of the tax-exempt sale for use in claiming exemption from payment of the tax to the taxing authority.

(b) When a State or local tax attaches at the time of sale to the consumer but the vendor refuses to sell at a price exclusive of the tax, Standard Form 1094 shall be used to obtain a record of the transaction for use by the United States Government in billing the taxing authority for refund of the taxes paid. In case of vendor refusal to sell on a tax-exclusive basis, the relevant payment voucher and Standard Form 1094 shall contain mutual cross-references of serial numbers so that the transaction may be identified for refund purposes. The installation shall bill the relevant local or State taxing authority for refund in case of vendor refusal to sell on a tax-exclusive basis. Uncollectible claims shall be referred to the Office of General Counsel, NASA.

(c) Tax exemption forms shall be issued only to contracting officers or their designees. Each NASA office receiving the forms shall maintain an adequate accounting record of the forms to show at all times (1) the number of U.S. tax exemption certificate books received, (2) the number of each book issued and to whom issued, (3) the numbers of those returned for reissue, or cancellation, or as completely used book covers, and (4) the balances on hand and available for distribution to persons authorized to use them.

Subpart 18–11.4—Contract Clauses

§ 18–11.401 Fixed-price type contracts.

§ 18–11.401–1 Clause for advertised and certain negotiated contracts.

The following clause shall be inserted in (a) all formally advertised contracts (other than construction contracts not in excess of $10,000), and (b) negotiated fixed-price type contracts in excess of $10,000 where the contracting officer is satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes. In negotiated fixed-price type contracts in excess of $2,500 but not in excess of $10,000, the clause may, at the discretion of the contracting officer, be inserted.

FEDERAL, STATE, AND LOCAL TAXES
(SEPTEMBER 1962)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and—

(1) results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty

or rate increase: *Provided*, The Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment of less than one hundred dollars ($100) shall be made in the contract price pursuant to paragraph (b) above.

(d) As used in paragraph (b) above, the term "contract date" means the date set for bid opening, or, if this is a negotiated contract, the contract date. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax: *Provided*, That evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the contract price will be furnished only at the discretion of the Government.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

§ 18–11.401–2 Alternate clause for certain negotiated contracts.

(a) *Use of clause.* (1) The clause set forth in paragraph (b) of this section shall be inserted in all negotiated fixed-price type contracts in excess of $10,000 where the contracting officer is not satisfied that the contract price, by virtue of competition or otherwise, excludes contingences for State and local taxes. Guidelines for using the clause are set forth in subparagraphs (2) through (5) of this paragraph.

(2) Subparagraphs (d) (1) and (d) (2) of the clause, respectively, provide for upward and downward escalation for certain taxes. Subparagraph (d) (4) of the clause prohibits upward and downward escalation for social security, income, franchise, excess profit, capital stock, unemployment compensation, and property taxes, except:

(i) Income and franchise taxes levied on or measured by (A) sales or receipts from sales, or (B) the contractor's possession of, interest in, or use of Government-owned property; and

(ii) Property taxes allocable to the contract which are assessed on completed supplies covered by the contract, or on the contractor's possession of, interest in, or use of property, title to which is in the Government.

(3) Paragraph (e) of the clause provides for the furnishing by the Government of evidence of exemption from taxes which the contractor warrants were excluded from the contract price. Evidence of exemption shall be issued only where there is a reasonable basis therefor.

(4) Paragraph (f) (1) of the clause obligates the contractor to notify the contracting officer of any tax matters (e.g., unexpected tax assessments or new legislation) which reasonably may be expected to result in an increase or decrease in the contract price. Paragraph (f) (2) of the clause obligates the contractor to follow instructions of the contracting officer when an adjustment in the contract price may be required, and provides for adjustment of the contract price to cover the costs of such action.

(5) Paragraph (b) of the clause furnishes criteria for determining the taxes included in the contract price. However, the contract may provide for the exclusion of a specific tax from the contract price. Where the contracting officer has doubt as to the applicability or allocability of any tax, language appropriate to the particular circumstances should be included in the contract after consultation with the Office of General Counsel or Chief Counsel, as appropriate. Special consideration should be accorded taxes assessed on the contractor's possession of, interest in, or use of Government-owned real and personal property. The following provision may be inserted in any contract under which the contractor has possession of property to which the Government has title on the tax assessment date, pursuant to progress payment clauses or otherwise:

All property taxes assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government, are excluded from the contract price. (SEPTEMBER 1962)

(6) Where Government property is furnished under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

(b) *Clause.*

FEDERAL, STATE, AND LOCAL TAXES
(SEPTEMBER 1962)

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(i) By Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract, or to property or interests in property; or

(ii) Pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties in effect on the contract date are included in the contract price, to the extent allocable to this contract.

(d) (1) If the Contractor is required to pay or bear the burden:

(i) Of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraphs (b) and (c), or of a tax or duty specifically excluded from the contract price by a provision of this contract; or

(ii) Of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) Of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be increased by the amount of such tax, duty, interest, or penalty allocable to this contract: *Provided*, That the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise: *And provided further*, That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which:

(i) Was to be included in the contract price pursuant to the requirements of paragraphs (b) and (c);

(ii) Was included in the contract price; or

(iii) Was the basis of an increase in the contract price; the contract price shall be decreased by the amount of such relief, refund, or drawback allocable to this contract, or the allocable amount of such relief, refund, or drawback shall be paid to the Government as directed by the Contracting Officer. The contract price also shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of, any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) This paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes; capital stock taxes; unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(5) No adjustment of less than one hundred dollars ($100) is required to be made in the contract price pursuant to this paragraph (d).

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from

the contract price. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(f) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorneys' fees.

§ 18–11.402 Cost-reimbursement type contracts.

No specific tax clause is required in cost-reimbursement type contracts since the problem of Federal, State, and local taxes presents solely a question of allowability of costs which is covered by the "Contract Cost Principles and Procedures" set forth in Part 18–15. However, if, during the course of negotiations, the contractor requests inclusion of a contract provision for Federal, State, and local taxes, the following clause is authorized for use.

FEDERAL, STATE, AND LOCAL TAXES (SEPTEMBER 1962)

Except as otherwise provided in this contract, Federal, State, and local taxes (other than (i) Federal taxes on income and excess profits, (ii) taxes in connection with financing, refinancing, or refunding operations, and (iii) Federal excise taxes from which exemption is obtainable under Sections 4221–4223 of the Internal Revenue Code of 1954 or for which a credit is obtainable under Section 6416(c) thereof) paid by the Contractor or any cost or cost-plus-a-fixed-fee subcontractor hereunder (provided that there was no fixed-price subcontractor intervening between such subcontractor and the Contractor) and incident to the performance of this contract, shall constitute items of allowable cost under this contract or such cost or cost-plus-a-fixed-fee subcontract if (i) the Contractor has requested NASA to furnish tax exemption certificates or other similar evidence of exemption for use by the Contractor and such cost or cost-plus-a-fixed-fee subcontractor in obtaining exemption from such Federal, State, or local taxes, and (ii) NASA has notified the Contractor that it will not furnish such evidence of exemption. Payments of taxes for which evidence of exemption has been furnished hereunder shall constitute items of Allowable Cost under this contract (i) if the Federal taxing authorities have refused to recognize such evidence of exemption, or (ii) if the State or local taxing authorities have refused to recognize such evidence of exemption and the Contractor has notified the Contracting Officer of such refusal and has taken such steps as may have been requested by the Government to cause such taxes to be paid in such manner as to preserve all rights to refund thereof, to preserve and to cause to be assigned to the Government any and all rights to any refund of such taxes, to permit the Government to prosecute any claim, litigation, or proceeding in the name of the Contractor, and to furnish to the Government all reasonable assistance and cooperation requested by the Government in the prosecution of any such claim, litigation, or proceeding for the recovery of such taxes.

PART 18–12—LABOR

Sec.
18–12.000 Scope of part.

Subpart 18–12.1—Basic Labor Policies

18–12.101 Labor relations.
18–12.101–1 Communications regarding labor matters.
18–12.101–2 Labor-management disputes.
18–12.101–3 Admission of labor representatives to contract sites.
18–12.102 Overtime, extra-pay shifts, and multi-shift work.
18–12.102–1 Definitions.
18–12.102–2 Policy.
18–12.102–3 Procedures.
18–12.102–4 Approvals.
18–12.102–5 Exceptions.
18–12.102–50 Overtime work on space programs at test sites.
18–12.102–51 Monitoring of overtime (general).
18–12.103 Federal and State labor requirements.
18–12.103–1 Policy.
18–12.103–2 Administration.
18–12.104 Meeting manpower requirements.

Subpart 18–12.2—Convict Labor

18–12.201 Basic requirement.
18–12.202 Applicability.
18–12.203 Contract clause.

Subpart 18–12.3—Work Hours Act of 1962

18–12.300 Scope of subpart.
18–12.301 General.
18–12.302 Applicability.
18–12.302–1 Statutory exemptions.
18–12.302–2 Exemptions by the Secretary of Labor.
18–12.302–3 Prospective application.
18–12.303 Contract clause.
18–12.303–1 Clause for general use.
18–12.303–2 Clause for contracts with a State or political subdivision.

Subpart 18–12.4—Labor Standards in Construction Contracts

18–12.400 Scope of subpart.
18–12.401 Statutes and regulations.
18–12.401–1 Definitions.
18–12.402 Applicability.
18–12.403 Contract clauses.
18–12.403–1 Clauses for general use.
18–12.403–2 Contracts for $2,000 or less.
18–12.403–3 Overseas contracts.
18–12.403–4 Contracts with a State or political subdivision.
18–12.403–5 Contracts for work at the Mississippi Test Facility (MTF) area.
18–12.404 Administration and enforcement.
18–12.404–1 General.
18–12.404–2 Wage determinations.
18–12.404–3 Additional classifications.
18–12.404–4 Apprentices.
18–12.404–5 Subcontracts.
18–12.404–6 Payrolls and statements.
18–12.404–7 Investigations.
18–12.404–8 Enforcement reports.
18–12.404–9 Suspensions and deductions of contract payments.
18–12.404–10 Restitution.
18–12.404–11 Contract terminations.
18–12.404–12 Cooperation with Department of Labor.
18–12.404–13 Reporting construction contract awards.

Subpart 18–12.6—Walsh-Healey Public Contracts Act

18–12.601 Statutory requirements.
18–12.602 Applicability.
18–12.602–1 General.
18–12.602–2 Department of Labor regulations and interpretations.
18–12.602–3 Procedure for obtaining exemptions with respect to stipulations required by the Act.
18–12.603 Responsibility of contracting officers.
18–12.604 Contract clause.

Subpart 18–12.7—Fair Labor Standards Act of 1938

18–12.701 Basic statute.
18–12.703 Rulings on applicability or interpretation.

Subpart 18–12.8—Equal Employment Opportunity

18–12.800 Scope of subpart.
18–12.801 Policy.
18–12.802 Clauses for contracts, grants, or other arrangements.
18–12.802–1 NASA contracts.
18–12.802–2 Federally assisted construction under grants and arrangements.
18–12.802–4 Requirements for invitation for bids or requests for proposals.
18–12.803 Applicability and exemptions.
18–12.804 Requests for exemptions.
18–12.805 Posting of nondiscrimination notices.

Subpart 18–12.9—Employment Restrictions for Security Purposes

18–12.901 Hiring restrictions on classified contracts.
18–12.902 Responsibilities of contractors to employees.

AUTHORITY: The provisions of this Part 18–12 issued under 42 U.S.C. 2473(b)(1).

§ 18–12.000 Scope of part.

This Part 18–12 (*a*) deals with general policies regarding labor, insofar as they relate to procurement, (*b*) sets forth certain pertinent labor laws and requirements, indicating in connection with each its applicability and any procedures thereunder, and (*c*) prescribes contact clauses.

Subpart 18–12.1—Basic Labor Policies

§ 18–12.101 Labor relations.

Is is NASA policy to maintain and encourage the best possible relations with industry and labor in order that the Government may procure needed supplies and services without delay. All problems arising out of labor relations of private contractors and all communications with labor organizations or Federal agencies relative thereto will be handled in accordance with procedures which are consistent with the following general policy.

(a) NASA contracting officers, in taking any of the actions prescribed or authorized in this Part 18–12, will consult with and secure advice from the labor relations advisor or other NASA official assigned such function at the installation concerned.

(b) NASA officials will remain impartial in, and will refrain from taking a position on the merits of, a dispute between labor and private management and will not undertake the conciliation, mediation, or arbitration of a labor dispute. NASA must, however, take any action that may be open to it under the circumstances to protect the Government's interest and to prevent, where possible, interruptions, in NASA schedules.

(c) NASA will, insofar as is practicable, exchange information concerning labor matters with other affected Government agencies in order to maintain a uniform Government labor policy in a particular plant or labor-management dispute.

(d) NASA officials will not take any independent action with respect to labor matters which involve major policy determinations which have a substantial impact on the activities of NASA or other Government agencies without the prior approval of the NASA Office of Labor Relations. A full report concerning any labor relations problem, particularly where a labor dispute significantly threatens to affect important NASA procurement, should be furnished to the NASA Office of Labor Relations, in accordance with § 18–12.101–2.

(e) The NASA Office of Labor Relations will take action in connection with labor relations problems consistent with its responsibilities, for example:

(1) Giving notice of the existence of a labor dispute, which affects or threatens to affect procurement of supplies or services, to the Government agency which has responsibility for conciliation, mediation, arbitration, or other action with respect thereto;

(2) Advising the Government agency responsible for action with respect to labor disputes, or the parties to a labor dispute, of factual information pertaining to procurement of the supplies or services involved to the extent consistent with security regulations; or

(3) Seeking to obtain such voluntary agreement between management and labor as will permit, notwithstanding the general continuance of the dispute, uninterrupted procurement of supplies and services, provided such activity does not involve NASA in the merits of a labor difference or dispute.

§ 18–12.101–1 Communications regarding labor matters.

Direct communication is not authorized with the national headquarters or national offices of any labor organization or Federal agency except with the specific prior approval of the NASA Office of Labor Relations. Contracting officers are authorized to communicate directly with local labor organizations and local offices of Federal agencies as required to carry out their responsibilities set forth in § 18–12.101–2 below.

§ 18–12.101–2 Labor-management disputes.

(a) *Reports.* Reports of actual or incipient labor-management disputes affecting NASA procurement, operations, or services shall be submitted as specified by the Director, Office of Labor Relations, NASA. These reports shall describe, but need not be limited to:

(1) The nature of the actual or incipient dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved, and the degree of emergency presented;

(2) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and the relation of the production involved to the total procurement program;

(3) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(4) The need for and availability of alternative facilities to furnish the items involved within the time required;

(5) The critical items, if any, which should be removed from the plant or work site or should be continued to be processed there with the consent of the parties to the dispute; and

(6) Recommended action to be taken by NASA.

Reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made, as appropriate, to provide full information and cover new developments. Reports shall be sent by the most expeditious means required in view of the seriousness of the situation. When an immediate critical effect on NASA procurement is probable, the initial report shall be made by telephone and followed by an electrically transmitted message or a confirming letter.

(b) *Other action by the contracting officer.* When a strike which may have an adverse effect on NASA programs is imminent or in progress at a prime or subcontractor's plant, contracting officers shall:

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, where appropriate, of the actions which NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission; however, if the strike is in a subcontractor's plant, the subcontractor will only be approached through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies and services to have been provided by the struck or strike-threatened plant;

(3) Consider removing finished items from the plant and seeking resumption of work by the contractor on those items to be furnished which are critical to NASA programs;

(4) Where it appears likely that the work stoppage cannot be prevented, consider removing from the plant work in process, components, and materials which are critical to the NASA program, with a view to continuing the work elsewhere.

(c) NASA Headquarters approval required for removal of items from affected plants or facilities. When the contracting officer determines that it would be in the best interest of the Government to remove items or to press for resumption of work as provided in paragraph (b) of this section, he shall first request approval from the NASA Office of Labor Relations and then take such action as shall be approved.

(d) *Inspection of material during labor disputes.* Despite the existence of a labor dispute, inspection functions at contract plants or sites shall be performed as normally required during contract performance except where the safety of the inspector may be endangered.

§ 18–12.101–3 Admission of labor representatives to contract sites.

NASA activities shall not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with performance of the contract work involved and applicable safety and security regulations.

§ 18–12.102 Overtime, extra-pay shifts, and multi-shift work.

§ 18–12.102–1 Definitions.

As used throughout this § 18–12.102, the following terms shall have the meanings set forth in this section:

(a) "Normal workweek and normal workday" mean, generally, a workweek of 40 hours and a workday of 8 hours, respectively. In any area outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours or a workday longer than 8 hours will be considered normal (1) if such workweek or workday does not exceed that which is normal for such area as determined by local custom, tradition, or law, and (2) if hours worked in excess of 40 hours in such workweek or 8 hours in such

workday are not compensated at a premium rate of pay.

(b) "Overtime" means time worked by a contractor's employee in excess of the employee's normal workweek or normal workday.

(c) "Shift premium" means the difference between the compensation paid to an employee at the contractor's regular rate of pay for the base shift and that paid at the regular rate of pay for extra-pay-shift work.

(d) "Overtime premium" means the difference between the compensation paid to an employee at the contractor's regular rate of pay for the shift involved and that paid for hours worked overtime.

(e) "Test site": A test site is any Government test or launch site jointly used by NASA and DoD for the purpose of conducting static or operational tests of a space vehicle or its components.

§ 18–12.102–2 Policy.

(a) While it is important that NASA space programs meet established schedules, it is equally important that such schedules be accomplished with maximum efficiency at reasonable cost and that employment opportunities be expanded wherever possible.

(b) Since overtime deals with the hours an individual works rather than the hours a facility is in operation, the use of excessive overtime results in reduced efficiency, unreasonable cost, and unreasonable restriction of employment opportunities.

(c) As a general principle, use of overtime will not be a regular practice; it will be authorized only when necessary to keep high priority and essential programs on schedule.

(d) Therefore, NASA contracts will be performed in the most economical manner consistent with procurement requirements. Multiple shifts will be used when determined to conform to this policy. Insofar as practicable, performance will be accomplished without the use of overtime. When required, overtime will be limited to and be the minimum needed for the accomplishment of specific work.

§ 18–12.102–3 Procedures.

(a) To the extent practicable, invitations for bids and requests for proposals shall not specify delivery or performance schedules which may be reasonably anticipated to necessitate overtime at Government expense.

(b) In the negotiation of contracts in excess of $10,000, the contracting officer, consistent with the nature and size of the procurement, shall use his best efforts (1) to ascertain the extent to which proposals and quotations are based on the payment of overtime premiums and shift premiums, and (2) to negotiate contract prices or estimated costs which are not based on the payment of overtime premiums or shift premiums, taking into consideration the practicability of procurement from other sources of all or part of the requirement.

(c) To prevent uneconomical use of overtime, extra-pay shifts, or multi-shifts at Government expense, or of any one of these where another would be more economical, all contracts in excess of $10,000, except those contracts listed below, shall contain a "Payment for Overtime and Shift Premiums" clause. The excepted contracts are:

(1) Firm fixed-price contracts;

(2) Fixed-price contracts with escalation not providing for labor escalation; and

(3) Fixed-price contracts providing for price redetermination prospectively only.

(d) The "Payment for Overtime and Shift Premiums" clause for use in cost-reimbursement type contracts is set forth in paragraph (h) (1) of this section. The clause set forth in paragraph (h) (2) of this section shall be used in the following contracts:

(1) Advertised and negotiated fixed-price supply contracts in excess of $10,000, containing a labor escalation clause;

(2) Negotiated fixed-price supply contracts in excess of $10,000, containing a clause providing for retroactive price redetermination; and

(3) Fixed-price research and development contracts in excess of $10,000, containing a labor escalation clause or a clause providing for retroactive price redetermination.

(e) Overtime for which overtime premiums will be at Government expense shall not be approved under a contract where the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(f) Where overtime premiums or shift premiums are being paid in connection with the performance of Government contracts, the continued need therefor shall be subject to periodic review.

(g) When NASA and one or more of the Military Departments have concurrent contracts at a single facility, NASA officials will work closely with officials of the Military Department concerned in managing contractor's use of overtime, extra-pay shifts, and multi-shifts.

(h) *Payment for overtime and shift premium clauses.* (1) Clause for cost-reimbursement type contracts.

PAYMENT FOR OVERTIME AND SHIFT PREMIUMS (SEPTEMBER 1962)

(a) Allowable cost shall not include any amount on account of overtime premiums or shift premiums, except to the extent that they either (i) are approved in writing on behalf of the Government; or (ii) are paid for work—

(A) Necessary to cope with emergencies, such as those resulting from accidents, natural disasters, or breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(B) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(C) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(D) Which will result in lower overall cost to the Government.

(b) The cost of overtime premiums or shift premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(2) Clause for fixed-price supply contracts and research and development contracts enumerated in paragraph (d) (1), (2), and (3) of this section.

PAYMENT FOR OVERTIME AND SHIFT PREMIUMS (SEPTEMBER 1962)

The contract price shall not include any amount on account of overtime premiums or shift premiums except to the extent that they either (i) are approved in writing on behalf of the Government; or (ii) are paid for work—

(A) necessary to cope with emergencies, such as those resulting from accidents, natural disasters, or breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(B) by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(C) in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(D) which will result in lower overall cost to the Government.

§ 18–12.102–4 Approvals.

(a) Overtime premiums and shift premiums at Government expense may be approved by the contracting officer by his written determination that such approval:

(1) Is necessary to meet delivery or performance schedules and such schedules are determined to be extended to the maximum consistent with essential NASA objectives;

(2) Is necessary to make up for delays beyond the control and without the fault or negligence of the contractor and, in construction contracts, which result from unforeseeable causes; or

(3) Is necessary to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(b) Approvals shall ordinarily be prospective but may be retroactive where justified by circumstances.

(c) Such approvals may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable.

§ 18–12.102–5 Exceptions.

The approvals required by § 18–12.102–4 do not apply to overtime premiums or shift premiums which are paid for work:

(a) Necessary to cope with emergencies, such as those resulting from accidents, natural disasters, or breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) By indirect labor employees, such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation

media, and operations in flight or afloat which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) Which will result in lower overall cost to the Government. However, the cost of such overtime or shift premiums may be allowed or considered in pricing (on the same basis as other indirect costs) only to the extent that the amount thereof is reasonable and properly allocable to the work involved.

§ 18–12.102–50 Overtime work on space programs at test sites.

(a) *General.* In order to eliminate excessive overtime work on space and missile programs at test sites, the Department of Defense and NASA have jointly agreed to the overtime management policy and guidelines set forth in paragraphs (b) and (c) of this section.

(b) *Management and control of overtime.* The following principles shall be used as guidelines in the management and control of contractor use of premium pay overtime in space programs at test sites:

(1) The use of multi-shifts, compensable at reasonable shift premium rates, shall be considered and, if practicable, substituted immediately for any work currently being performed on an excessive overtime basis;

(2) Overtime of 20 hours in any one week by any employee shall be the maximum approvable overtime except under compelling exigencies involving the national interest; and

(3) Any amounts regularly paid by contractors for overtime, at overtime premium rates of pay, and without regard to the Government's requirement for such overtime, are to be considered "unreasonable" within the meaning of the cost principles of Part 18–15 of this chapter.

(c) *Informing contractors or other parties of policy.* (1) The contracting officer authorized to approve overtime in accordance with § 18–12.102–4 shall inform, by letter, NASA contractors to be engaged in work on space programs at test sites of the NASA overtime management policy set forth in § 18–12.102.

(2) Such information also may be made available to any other interested party.

§ 18–12.102–51 Monitoring of overtime (general).

(a) Effective monitoring of overtime presupposes verification that the contractor has established an internal system of control which includes a requirement for approval by management of overtime upon proper justification by the user, and follow-up by management to ascertain the amount of overtime actually used within the approved amount. The existence of such system may properly be regarded as an essential prerequisite for compliance with the clause specified in the contract and with the requirements of § 18–1.905–50 with respect to pre-award surveys.

(b) A necessity for monitoring overtime utilization (or exercising surveillance over the contractor's efforts to control overtime) will arise in the following instances:

(1) Excepted overtime (see § 18–12.102–5);

(2) Overtime requiring approval, where no stipulated amount has been contractually authorized (see § 18–12.102–4);

(3) Overtime requiring approval and approved (sometimes with limitations);

(4) Overtime in space programs at test sites (see § 18–12.102–50); and

(5) Subcontractor overtime.

(c) The following controls shall be applicable in each of the situations referenced in paragraph (b) of this section.

(1) *Excepted overtime.* The exemption from the approval requirements of § 18–12.102–4 contained in § 18–12.102–5 does not obviate the necessity for review to determine that it is truly excepted overtime, and that it is reasonable in amount and allocable to the contract. Contracting officers shall consequently maintain or cause to be maintained when contract administration functions are delegated) a record of overtime expenditures in this category every 60 days (dates of performance of overtime hours, straight time, and premium dollars) with an explanation as to the applicability of one or more of the exceptions. Audit assistance shall be utilized to verify the existence and adequacy of the contractor's system of control. Technical assistance (e.g., a production specialist) shall be utilized to verify that overtime is truly excepted, that it is reasonable, and that it is allocable to the contract to which it is sought to be charged.

(2) *Overtime requiring approval where no stipulated amount has been contractually authorized.* Verification of the adequacy of the contractor's system of control shall be required to ensure that, under normal circumstances, requests for approval are made on a prospective basis to provide for prior approval. Contractors shall be instructed that requests for overtime authorization will be supported, at a minimum, with answers to the following questions:

(i) Why is overtime required? How much (period of time including an estimate of the number of direct and indirect hours expected to be utilized during the requested overtime period)? What type (skill)? Contract item(s) involved?

(ii) How did the situation arise? What corrective action will be taken to prevent recurrence?

(iii) Was situation foreseeable? If not, why not?

(iv) What is the impact if the overtime is not approved (schedule and cost)?

(v) Has an overtime request been previously made for the same or similar reasons?

Submissions by contractors in support of requests for overtime authorization shall be evaluated in accordance with the criteria in § 18–12.102–4. Review shall be performed every 60 days to ensure that overtime is utilized within the approved limits, in judicious fashion, and in connection with the situation or circumstances which gave rise to the original authorization.

(3) *Overtime requiring approval and approved.* The procedures governing verification of the adequacy of the contractor's system of control and review of overtime utilization referred to in subparagraphs (1) and (2) of this paragraph are equally applicable in this instance. When contract administration functions are being performed by another NASA installation or by one of the Military Departments, and the contracting officer has authorized the use of overtime by contractual provision, a copy of the memorandum reflecting the basis for this authorization will accompany the letter of delegation so that an opportunity will be afforded for determining, on periodic review, whether the circumstances which justified the original authorization continue to prevail.

(4) *Overtime in space programs at test sites.* Management and control of overtime utilization in this category will be governed by provisions of § 18–12.102–50(b). Nothing contained therein, however, is intended to obviate the necessity for prudent use of overtime by contractors. A periodic review of such overtime utilization will consequently be required.

(5) *Subcontractor overtime.* In a complex systems contract involving multiple subcontract tiers, the efficacy of any attempt to control costs, overtime or other, will hinge on the efficiency of the prime contractor in managing his subcontractors. Contracting officers shall be responsible for surveillance over the prime contractor's efforts. They shall ensure that administrative functions have been properly assigned in connection with every significant cost-reimbursement or fixed-price incentive or redeterminable type subcontract and that the assignment specifically refers to the monitoring of overtime as detailed in this section. Subcontracts containing an authorization for overtime shall not be approved where the basic prime contract contains no such authorization and no separate approval under the prime contract has been given.

§ 18–12.103 Federal and State labor requirements.

§ 18–12.103–1 Policy.

It is the policy of NASA to cooperate with and to require contractors to cooperate to the fullest extent possible with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health, and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

§ 18–12.103–2 Administration.

(a) NASA will not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(b) Contracting officers may support applications of contractors or suppliers when relaxation of State labor standards does not conflict with applicable Federal Labor Laws, such as the Fair Labor Standards Act of 1938 (29 U.S.C. 201–

219), the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45), the Davis-Bacon Act (40 U.S.C. 276a), the Work Hours Act of 1962 (40 U.S.C. 327–332), and when all of the following circumstances are present:

(1) The required products or services are in short supply and failure to meet production schedules for critically needed end items will result unless the suspension or relaxation of State labor standards is approved;

(2) There are no alternative sources of supply for such products or services available within the required delivery schedule;

(3) Remedial action (such as recruitment, training, and more effective utilization of manpower) is not practicable; and

(4) The granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(c) NASA letters of support will be addressed to the appropriate State agency and will indicate:

(1) The facilities and services affected; and

(2) The extent of relaxation of the particular State labor standard required to complete the specific work in conformity with the procurement schedule.

§ 18–12.104 Meeting manpower requirements.

It is the policy of NASA to cooperate with and to encourage contractors to utilize, to the fullest extent practicable, the United States Employment Services (USES) and its affiliated Local State Employment Service Offices in matters pertaining to meeting contractors' manpower (labor supply) requirements, including the recruitment of workers in all occupations and skills, both from local labor market areas and through the Federal-State manpower clearance system, to staff new or expanding plant facilities. Local State Employment Service Offices are operated in every State and in the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors who need and desire it, cooperation with the Local State Employment Service Offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

Subpart 18–12.2—Convict Labor

§ 18–12.201 Basic requirement.

Pursuant to the policy set forth in the Act of February 23, 1887 (18 U.S.C. 436), and in accordance with the requirements of Executive Order 325A, dated May 18, 1905, all contracts entered into by NASA involving the employment of labor within the United States shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons undergoing sentences of imprisonment at hard labor imposed by State or municipal criminal courts. The requirement does not prohibit the employment of persons on parole or probation or of persons who have been pardoned or who have served their terms.

§ 18–12.202 Applicability.

The requirement set forth in § 18–12.201 applies to all contracts involving the employment of labor within the United States except the following kinds:

(a) Any contract subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart 18–12.6 of this chapter) which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract";

(b) Any contract for the purchase of supplies or services from Federal Prison Industries, Inc.; and

(c) Any contract for the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

§ 18–12.203 Contract clause.

The following clause shall be inserted in NASA contracts as required by this Subpart 18–12.2:

CONVICT LABOR (SEPTEMBER 1962)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

Subpart 18–12.3—Work Hours Act of 1962

§ 18–12.300 Scope of subpart.

This Subpart 18–12.3 deals with the requirements of the Work Hours Act of 1962 (40 U.S.C. 327–332; Public Law 87–581 approved August 13, 1962; 76 Stat. 357–360).

§ 18–12.301 General.

The Work Hours Act of 1962 repealed the Eight Hour Law of 1912, as amended (40 U.S.C. 324–326), and the Eight Hour Law applicable to construction contracts (40 U.S.C. 321, 322). The Work Hours Act of 1962, among other things, establishes a standard workday of 8 hours and a standard workweek of 40 hours for laborers and mechanics employed on Government contracts and requires payment for all hours worked in excess of the standard workday or workweek at one and one-half times the basic rate of pay. The Department of Labor has issued implementing instructions by its Memorandum No. 42 dated October 15, 1962, and amendment thereto, dated April 22, 1963 (42 F.R. 4251, April 30, 1963). Comprehensive regulations implementing the Work Hours Act are scheduled for issuance by the Department of Labor, which may require further revisions of current policy.

§ 18–12.302 Applicability.

§ 18–12.302–1 Statutory exemptions.

The Work Hours Act of 1962 is applicable to construction contracts and to other contracts involving the employment of laborers and mechanics either by a contractor or any subcontractor in the United States, and in other areas under the jurisdiction of the United States not exempted by the Secretary of Labor (see §18–12.302–2), except:

(a) Contracts for transportation by land, air, or water;

(b) Contracts for the transmission of intelligence;

(c) Contracts for purchase of supplies or materials or articles ordinarily available in the open market; or

(d) Contracts to which the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45) is applicable.

§ 18–12.302–2 Exemptions by the Secretary of Labor.

The Secretary of Labor has exempted (29 CFR 5.14(b)) from all provisions of the Work Hours Act of 1962 the following classes of contracts:

(a) Construction contracts of $2,000 or less;

(b) Purchases and contracts other than construction contracts in the aggregate amount of $2,500 or less. In arriving at the aggregate amount involved there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising; and

(c) Contracts (or portions thereof) to be performed in a foreign country or within territory under the jurisdiction of the United States other than the following: a state of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act; American Samoa; Guam; Wake Island; and the Canal Zone, to the extent that such contracts (or portions thereof) may require or involve the employment of laborers or mechanics there.

§ 18–12.302–3 Prospective application.

The Act does not apply to contracts in existence on October 12, 1962, or entered into pursuant to invitations for bids outstanding on October 12, 1962, and to subcontracts made thereafter under such contracts, if the contracts have not been subsequently amended to include the Work Hours Act of 1962—Overtime Compensation clause. However, the Act does apply to bilateral modifications of such contracts executed on or after October 12, 1962. (See Comptroller General Decision B–151068, dated April 8, 1963.)

§ 18–12.303 Contract clause.

§ 18–12.303–1 Clause for general use.

The following clause shall be included in all contracts to which the Act applies, except construction contracts. The applicable clause for construction contracts is set forth in § 18–12.403–1(b).

WORK HOURS ACT OF 1962—OVERTIME COMPENSATION (DECEMBER 1962)

This contract, to the extent that it is of a character specified in the Work Hours Act of 1962 (Public Law 87–581, 76 Stat. 357–360) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45), is subject to the following provisions and to all other provisions and exceptions of said Work Hours Act of 1962.

(a) *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any such calendar day or in excess of forty hours in any such workweek, as the case may be.

(b) *Violations; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) *Withholding for Unpaid Wages and Liquidated Damages.* The Contracting Officer may withhold, or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Insertion of Clause in Subcontracts.* The Contractor agrees to insert this clause including this paragraph (d) in all subcontracts.

§ 18–12.303–2 Clause for contracts with a State or political subdivision.

In the case of contracts with a State or political subdivision thereof, the clause required by § 18–12.303–1 shall be the clause set forth therein, except that it shall be prefaced by the following provision:

The Contractor agrees to insert the following clause in all subcontracts hereunder with private persons or firms.

(SEPTEMBER 1962)

Subpart 18–12.4—Labor Standards in Construction Contracts

§ 18–12.400 Scope of subpart.

This Subpart 18–12.4 deals with labor standards for construction contracts as prescribed by the statutes and regulations set forth in this section.

§ 18–12.401 Statutes and regulations.

(a) *Davis-Bacon Act.* The Davis-Bacon Act (Act of March 3, 1931, as amended, 40 U.S.C. 276a) provides that certain contracts over $2,000 entered into by any Department for the construction, alteration, or repair (including painting and decorating) of public buildings or public works shall contain a provision to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wages as determined by the Secretary of Labor.

(b) *Copeland Act.* The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction or repair of public buildings or public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment. In accordance with regulations of the Secretary of Labor issued pursuant to the Copeland Act, certain contracts entered into by any Department shall contain a provision to the effect that the contractor and any subcontractor shall comply with the regulations of the Secretary of Labor under the Act.

(c) *Work Hours Act of 1962* (see Subpart 18–12.3).

(d) *Department of Labor regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (15 F.R. 3176), the Secretary of Labor has issued Regulations Part 3, Title 29, Subtitle A, Code of Federal Regulations (7 CFR 686, as amended), and Regulations Part 5, Title 29, Subtitle A, Code of Federal Regulations (16 CFR 4430, as amended), providing for the administration and enforcement of these statutes in construction contracts. The requirements under the Davis-Bacon Act and the Copeland Act apply only to the United States, while the Work Hours Act of 1962 applies also to other areas over which the United States has direct legislative control.

§ 18–12.401–1 Definitions.

For purposes of the acts cited in § 18–12.401, the following definitions apply.

(a) The terms "building" and "work" refer to construction activity, including, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, streets, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

(b) The terms "public building" or "public work" include building or work of which the construction, alteration, or repair is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public, regardless of whether title thereto is in the United States.

(c) The terms "construction," "alteration," or "repair" include all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, painting, and decorating; transporting materials and supplies to or from the building or work by the employees of the construction contractor, or construction subcontractor; and manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed by the contractor or subcontractor. Demolition of existing structures not related to new construction is not included.

(d) A construction contract for purposes of this Subpart 18–12.4 is in excess of $2,000 if the contract is in an actual amount (not merely an estimated amount) in excess of $2,000. A contract initially $2,000 or less which is later increased over that amount by supplemental agreement or change order is in excess of $2,000 from the effective date of such a change in the contract amount, and the requirements of the Davis-Bacon Act, if otherwise applicable, are applicable to that part of the contract which has not been performed on such date.

§ 18–12.402 Applicability.

The statutory requirements referred to in § 18–12.401 apply to construction contracts. They do not apply to the following kinds of contracts:

(a) Contracts for supplies (including installations or maintenance work which is only incidental to the furnishing of such supplies); however, the requirement does apply—

(1) Where installation involves a substantial amount of construction at the site, such as for heavy generators and large refrigerators;

(2) To the transportation of supplies to or from the site of the work by employees of the construction contractor or of a construction subcontractor; and

(3) To the manufacturing or furnishing of supplies, such as window frames and other millwork, on the site of the work by the contractor or subcontractor on a construction, alteration, or repair contract otherwise subject to the Act, and to the manufacturing or furnishing of supplies under a contract based upon the specifications, and at the site of the work of a construction, alteration, or repair contract otherwise subject to the Act;

(b) Contracts for servicing or maintenance work (including installation or movement of machinery or other equipment and incidental plant rearrangement) which involve only an incidental amount of construction, alteration, or repair; however, the requirement does apply to—

(1) Installation, movement, or rearrangement of machinery or other equipment involving a substantial amount of construction or repair; and

(2) Servicing or maintenance work based upon the specifications of a construction contract otherwise subject to

the Act and which is performed at the site of the construction work involved;

(c) Contracts for the construction or repair of vessels, aircraft, or other kinds of personal property;

(d) Contracts to be performed at a place not known or not reasonably ascertainable at the time the contract is entered into.

§ 18–12.403 Contract clauses.

§ 18–12.403–1 Clauses for general use.

Except as provided in § 18–12.403–4, every construction contract in excess of $2,000 for work within the United States shall include the following clauses:

(a) *Davis-Bacon Act (40 U.S.C. 276a–276a–7).*

DAVIS-BACON ACT (40 U.S.C. 276a–276a–7) (SEPTEMBER 1962)

(a) All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Act ("Anti-Kickback") Regulations (29 C.F.R. Part 3)) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (i) by written notice to the Government prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (ii) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) Paragraphs (a) and (b) of this clause shall apply to this contract to the extent that it is a prime contract with the Government subject to the Davis-Bacon Act or a subcontract under such prime contract.

(b) *Work Hours Act of 1962—overtime compensation.*

WORK HOURS ACT OF 1962—OVERTIME COMPENSATION (JULY 1963)

(a) *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any such calendar day or in excess of forty hours in any such workweek, as the case may be.

(b) *Violations; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) *Withholding for Unpaid Wages and Liquidated Damages.* The Contracting Officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(c) *Apprentices.*

APPRENTICES (SEPTEMBER 1962)

Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U.S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U.S. Department of Labor.

(d) *Payroll records and payrolls.*

PAYROLL RECORDS AND PAYROLLS (SEPTEMBER 1962)

(a) Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contractor will make his employment records available for inspection by authorized representatives of the Contracting Officer and the U.S. Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(b) A certified copy of all payrolls will be submitted weekly to the Contracting Officer. The Government prime Contractor will be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Secretary of Labor attached to this contract, and that the classifications set forth for each laborer or mechanic conform with the work he performed.

(e) *Copeland ("Anti-Kickback") Act—nonrebate of wages.*

COPELAND ("ANTI-KICKBACK") ACT—NONREBATE OF WAGES (SEPTEMBER 1961)

The regulations of the Secretary of Labor applicable to Contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Government prime Contractor will be responsible for the submission of statements required of subcontractors hereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions.

(f) *Withholding of funds to assure wage payments.*

WITHHOLDING OF FUNDS TO ASSURE WAGE PAYMENT (SEPTEMBER 1962)

There may be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, the Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Government prime Contractor.

(g) *Subcontracts—termination.*

SUBCONTRACTS—TERMINATION (JULY 1963)

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Work Hours Act of 1962—Overtime Compensation," "Apprentices," "Payroll Records and Payrolls," "Copeland ('Anti-Kickback') Act—Nonrebate of Wages," "Withholding of Funds to Assure Wage Payment," and "Subcontracts—Termination" in all subcontracts, and the Contractor further agrees that a breach of any of the requirements of these clauses may be grounds for termination of this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government prime Contractor."

When using Standard Form 19A, the "Subcontracts—Termination" clause therein shall be used in lieu of the clause set forth in paragraph (g) of this section and the clause set forth in § 18–12.403–1 (b) entitled "Work Hours Act of 1962—Overtime Compensation" shall be substituted for the "Eight-Hour Law—Overtime Compensation" clause.

§ 18–12.403–2 Contracts for $2,000 or less.

Except as provided in § 18–12.403–4, every construction contract for $2,000 or less for work within the United States shall include the following clauses:

(a) *Nonrebate of wages.*

NONREBATE OF WAGES (JANUARY 1964)

The Regulations issued by the Secretary of Labor (29 C.F.R., Part 3) pursuant to the Anti-Kickback Act, as amended (40 U.S.C. 276c, 18 U.S.C. 874), are applicable to this contract. (In substance they provide that no deductions may be made from wages except those required by law or permitted by the Regulations, that contractors and subcontractors shall preserve for 3 years after completion of the work payrolls which contain for each employee, his name, address, correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid, and shall submit weekly a statement of compliance, the form of which is stated in the Regulations.)

(b) *Subcontractors—termination.*

SUBCONTRACTORS—TERMINATION
(JANUARY 1964)

The Contractor agrees to insert the clause hereof entitled "Nonrebate of Wages" in all subcontracts under this contract. The term "Contractor" as used in such clause in any subcontract shall be deemed to refer to the subcontractor. Breach of the requirements of this clause may be grounds for the termination of this contract.

When using Standard Form 19, delete paragraphs (a), (b), and (c) of clause 10 thereof, "Labor Standards Provisions Applicable to Contracts Not in Excess of $2,000," and substitute the clauses set forth in paragraphs (a) and (b) of this section.

§ 18–12.403–3 Overseas contracts.

Every construction contract for work outside the United States but within any area within United States jurisdiction as stated in § 18–12.302–2(c) shall include (a) the "Work Hours Act of 1962—Overtime Compensation" clause set forth in § 18–12.403–1(b), and (b) the "Subcontracts—Termination" clause set forth in § 18–12.403–1(g), except that the first sentence thereof shall be modified to refer only to the clauses entitled "Work Hours Act of 1962—Overtime Compensation," and "Subcontracts—Termination."

§ 18–12.403–4 Contracts with a State or political subdivision.

In the case of construction contracts with a State or political subdivision thereof, the contract clauses required by § 18–12.403–1 or § 18–12.403–2, whichever is applicable, shall be inserted therein and each clause shall be prefaced by the following provisions.

The Contractor agrees to insert the following in all subcontracts hereunder with private persons or firms. (SEPTEMBER 1962)

§ 18–12.403–5 Contracts for work at the Mississippi Test Facility (MTF) area.

(a) *Project stabilization agreement.* (1) A Project Stabilization Agreement applicable to the NASA Mississippi Test Facility has been negotiated by the Contractors' Associations and other local and national associations of contractors, the Gulf Coast Mississippi Building and Construction Trades Council, and the Building and Construction Trades Department, AFL–CIO.

(2) The Agreement, effective July 1, 1963, contains, among other factors, certain money provisions (i.e., rates and amounts for wages and other compensation, including but not limited to fringe benefits, overtime and shift premiums, and holiday and travel pay) which have been agreed upon for the period of the Project Stabilization Agreement.

(b) *Administrator's determination.* On September 26, 1963, pursuant to the authority of Public Law 85–804 (50 U.S.C. 1431–35) the Administrator, NASA, determined for the performance of construction work at Mississippi Test Facility, that in order to facilitate the national defense it is necessary to include in all contracts, and amendments and modifications thereof a clause requiring all contractors and all subcontractors to abide by the money provisions of the Project Stabilization Agreement. This determination will remain in effect until June 30, 1966, unless sooner terminated or extended by the Administrator.

(c) *Requirements for use of clause.* All applicable invitations for bids, requests for proposals, and contracts and modifications thereto issued by or on behalf of NASA shall include the "Employee Compensation" clause, the "Table of Employee Compensation" and the "Schedule of Wages and Fringe Benefits" as prescribed in paragraphs 5a and 3d, respectively, of the NASA Management Instruction 3–3–17.

(d) *Contracting authority.* Because use of the clause identified in paragraph (c) of this section is based on a determination pursuant to Public Law 85–804 (50 U.S.C. 1431–1435), the requirements of § 18–17.108 shall be complied with in making contracts and modifications containing such clause.

§ 18–12.404 Administration and enforcement.

§ 18–12.404–1 General.

(a) *Preconstruction conference or letter.* The contracting officer administering the contract shall ascertain that the contractor is fully aware of and understands an employer's responsibilities imposed by the contract labor standards provisions by conducting a preconstruction conference or, as an alternate method, by submitting a preconstruction letter to the contractor. When a preconstruction conference is held, a memorandum containing a summary of the information and guidance given to the contractor shall be placed in the contract file.

(b) *Examination of records.* The contracting officer administering the contract shall initiate such examinations into the records and activities of the contractor and his subcontractor(s) as are necessary to ensure full compliance with the applicable labor statutes and labor standards provisions in this Subpart 18–12.4.

§ 18–12.404–2 Wage determinations.

(a) *General.* The wage determination, issued by the Department of Labor pursuant to the Davis-Bacon Act, is a schedule of the minimum hourly rates of wages to be paid laborers and mechanics employed by the contractor and his subcontractors performing work called for by the contract. It normally includes all the classifications of laborers and mechanics expected to be employed on the work. There are three types of determination: area determinations, limited area determinations, and individual determinations.

(1) *Area (54A) determinations.* Area (54A) Determinations provide wage rates for all kinds of construction contracts which may be awarded at an installation or within a given geographical area (usually a county) during the 120-day life of the determination. This type of determination is issued only for installations where continuing construction activity is anticipated. Area determinations must be renewed on a continuous basis by submission of Department of Labor Form DB–11, "Request for Determination," to the Department of Labor approximately 30 days prior to the expiration of each current area determination (see paragraph (c)(2) of this section).

(2) *Limited area (54A) determinations.* In some States, the Department of Labor does not include in the area type determination wage rates applicable to heavy or highway construction. In these States, the wage rates issued are for all classifications for either "Building Construction" only, or "Building, Utilities, and Incidental Paving." This type of determination is known as a limited area determination; where the Department of Labor issues this type of determination, the requesting office must submit requests for individual determinations for heavy and highway construction projects as described in subparagraph (3) of this paragraph. This type of determination is applicable in the following States:

Alabama.	Nebraska.
Arkansas.	New Mexico.
Florida.	North Carolina.
Georgia.	North Dakota.
Iowa.	Oklahoma.
Kansas.	South Carolina.
Louisiana.	South Dakota.
Maryland.	Texas.
Mississippi.	Virginia.
Maine.	

(3) *Individual determinations.* Individual determinations are provided by the Department of Labor for a single contract. Such a determination must be obtained for each contract subject to the Davis-Bacon Act unless an Area (54A) Determination is applicable. The classifications of laborers and mechanics in individual wage determinations are limited to those classes employed in the type of work required by the contract, as indicated in the request.

(b) *Limitations.* Wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and award, a new wage determination should be requested sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Solicitor of Labor, upon a written finding to that effect by the Administrator or his representative in individual cases, may extend the expiration date of a determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. Whenever it is considered necessary to extend the expiration date of a wage determination, a proposed finding shall be prepared for the signature of the Director of Procurement and sent with supporting documentation to NASA Headquarters (Code KDP).

(c) *Processing requests*—(1) *Responsibility for obtaining determinations.* The Office of Procurement is responsible for obtaining from the Secretary of Labor and for furnishing to the particular installation concerned all determinations of prevailing wage rates under the Davis-Bacon Act required in the awarding of construction contracts of NASA.

(2) *Preparation of requests.* For those installations covered by area determinations, requests for wage rates on Department of Labor Form DB–11 will be prepared by the Office of Procurement and submitted to the Department of Labor thus providing, in effect, continuous wage rate coverage. Requests for individual wage determinations will be submitted by the installation concerned on Department of Labor Form DB–11 (in original and two copies) to the Office of Procurement (Code KDP) at least 30 calendar days before required for the advertisement or negotiation of the contract for which the determination is sought. In preparing the request, only the original copy of the Department of Labor Form DB–11 will be typed with a reversed carbon which will make an impression on the back of the form. The original will be submitted to the Department of Labor by NASA Headquarters. For area determinations, the description of the work will be: Area (54A) Determination—Building, Heavy and Highway Construction. Do not check any classifications as all classifications are contained in the area type determinations. In those States where the Department of Labor issues a limited 54A Area Determination, the description will be: Area (54A) Determination—For Building Construction Only or Building, Utilities, and Incidental Paving. In these cases, a Department of Labor Form DB–11 must be submitted on an individual basis for determinations for Heavy and Highway Construction Projects, with the work to be accomplished in detail. For individual determinations, the description of the work shall be sufficiently detailed to enable the Department of Labor to determine that the work is one of the three categories; namely, Building, Heavy or Highway Construction. In the block entitled "Location," the name of the municipality nearest to the site of the work will be inserted. The State and County in which the work is to take place will be inserted in the spaces provided. Classifications of laborers and mechanics needed to perform the work will be checked by typed X. Needed classifications which are generally used in the area but which do not appear on the Department of Labor Form DB–11 will be typed in the blank spaces. The Apprentice Schedule is to be left blank as the Department of Labor will furnish these rates.

(d) *Use of wage rate determinations.* (1) The specifications of every contract subject to the Davis-Bacon Act shall include a copy of a current wage rate determination. If the wage rate determination is not available when invitations for bids are issued, the specifications shall contain a statement that wage rates will be supplied by addenda to the specifications. Contracting officers shall not open bids on procurements subject to the Davis-Bacon Act until the requested determination of wage rates has been incorporated in the specifications.

(2) Wage rates properly included in the contract at the time of award are applicable to the contract for its duration except as specified in subparagraph (ii) of this paragraph. These same rates may be used for additional or new work not included in the specifications if an area determination was used in the invitations for bids or requests for proposals and that determination is still in effect at the time of change. If the area determination has expired or if an individual determination was used, a new wage determination must be used for such new or additional work unless it is clear that the new or additional work is so much a part of the work originally contracted for that it is reasonably impossible of performance by other than the original contractor. (An apparent probability that the new work may be done more conveniently or even at less expense by the original contractor does not in itself justify use of the original determination for such work. The original determination should be used for new work only if the new work does not reflect a change or modification which materially alters the scope or character of the original contract requirements and is so closely related to the original work, both in nature and in timing, that it cannot reasonably be regarded as a separate and distinct undertaking.)

(i) *Fixed-price contracts (formally advertised or negotiated).* Once a contract is awarded, the wage rates contained in the specifications are the minimum rates that can be paid by the contractor or his subcontractors during the life of the contract.

(ii) *Cost-reimbursement type, time and material, and labor-hour contracts and subcontracts.* The wage rates established for and included in cost-reimbursement type prime or subcontracts (including time and material contracts and labor-hour contracts), according to the Davis-Bacon Act, are the minimum rates that can be paid during the life of the contract. Reimbursement to contractors and subcontractors holding the foregoing types of contracts for wages paid to laborers and mechanics are based on this wage schedule; all applications of prime and subcontractors to use higher wage rates require specific approval by the contracting officer. The contracting officer's approval shall be based upon substantiating data in support of the contractor's request, such as: proposed wage rates were established as a result of bona fide collective bargaining in which the contractor participated or to which he adheres as a general practice or as a result of membership in contractors' organizations; proposed wage rates have approval of any existing wage-stabilizing body established pursuant to Federal law; or payment of wages at higher rates is required to man the job. Subcontracts awarded pursuant to a cost-reimbursement type, time and material, or labor-hour contract shall include wage rates prevailing at the time of the subcontract award, except where the subcontracted work is included in the specifications of the prime contract and is a part of the particular work for which the wage rate determination attached to the prime contract was obtained.

(e) *Modification and superseding determinations.* During the 120-day life of a determination, the Department of Labor may issue a modification thereto, changing the wage rate for one or more classifications or adding or deleting a classification; or the Department of Labor may issue a new determination which entirely supersedes the original determination for the duration of the 120-day period. The word "modification" as used in this § 18–12.404 includes new or superseding wage determinations. Modifications do not change the expiration date of the original determination. Modifications by the Secretary of Labor of an original wage determination shall be made part of the proposed contract if received prior to the award of the contract, *provided* that, in a formally advertised procurement, any modification received less than 10 calendar days before the opening of bids may be disregarded.

(f) *Posting.* The contracting officer shall ascertain that a copy of the wage determination is kept posted at the site of the work in a prominent place where it can be easily seen by the workers.

§ 18–12.404–3 Additional classifications.

If any laborers or mechanics not listed in the wage determination attached to the contract are to be employed, their classifications and minimum wage rates shall be established by the contractor or subcontractor, with the approval of the contracting officer, conformably to the attached wage determination. A report of any such determination shall be transmitted to the Secretary of Labor. If the interested parties cannot agree upon any such additional classification and wage rate, the matter accompanied by the recommendation of the contracting officer shall be referred via the Director of Procurement to the Secretary of Labor for final determination.

§ 18–12.404–4 Apprentices.

(a) In accordance with Section 5.5(a)(4) of the Department of Labor Regulations (29 CFR Part 5) as implemented by Memorandum No. 59 issued on June 24, 1964, from the Office of the Solicitor, the Labor Department will no longer list apprentice rates on wage determinations under the Davis-Bacon Act and related acts. Future determinations will contain the following notation:

Before using apprentices on the job, the contractor shall present to the Contracting Officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration

by the U.S. Bureau of Apprenticeship and Training.

The contractor shall submit to the Contracting Officer written evidence of the established apprentice-journeyman ratios and wage rates in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

(b) Any employee of a contractor listed on a payroll at an apprentice wage rate who is not registered as an apprentice and within an established apprentice-journeyman ratio, as provided in paragraph (a) of this section, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

§ 18–12.404–5 Subcontracts.

The contracting officer shall obtain a list of all subcontracts, together with a description of the work to be performed thereunder, and such list shall be kept current during the performance of the contract.

§ 18–12.404–6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the prime contractor will submit and cause all his subcontractors to submit through him to the contracting officer, copies of certified weekly payrolls showing all laborers and mechanics engaged on the contract at the site of the work, including the name and address of each employee, his correct classification, daily and weekly number of hours worked, rate of pay, deductions made, and actual wages paid. Each payroll shall contain or be accompanied by a statement of the contractor (or subcontractor) that he has complied with the labor standards provisions of the contract. The receipt of these payrolls and statements is a condition precedent to final payment under the contract. Contracting officers should encourage contractors to make use of optional payroll Forms SOL–184 and 185, developed by the Department of Labor for voluntary use on Federal construction contracts subject to the Davis-Bacon Act and related Acts.

(b) *Payroll Deductions.* (1) No payroll deductions are authorized except as follows:

(i) Where required by Federal, State, or local statute or ordinance to be made by the employer from the wages earned by the employee;

(ii) Bona fide prepayment of wages without discount or interest;

(iii) Deductions required by court process: *Provided,* That the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person, or where collusion or collaboration exists; and

(iv) As permitted by subparagraphs (2), (3), and (4) of this paragraph.

(2) Deductions which meet the standards set forth in subparagraphs (i) through (iv) of this paragraph are permissible provided the contractor or subcontractor has made written application by registered mail to the Secretary of Labor (copies must be furnished the contracting officer) indicating that:

(i) The deduction is not prohibited by law;

(ii) The employee has consented voluntarily to the deduction in writing, prior to the payroll period, and the consent is neither a condition for obtaining employment nor for continuation of employment or that the deduction is provided for in a bona fide collective bargaining agreement and is for the benefit of the employee or the labor organization which represents the employee;

(iii) No profit, benefit, or payment is obtained directly or indirectly by the contractor, subcontractor, or any affiliated person from the deduction and that no portion of the funds, whether in the form of a commission or otherwise, will be returned to the contractor, subcontractor, or any affiliated person; and

(iv) The deduction is for the convenience and in the interests of the employee and that the deductions are customary in this or comparable situations.

However, if the Secretary of Labor decides on his own motion or on the motion of an affected person or agency that the deduction does not meet these standards, he will give written notice to the contractor or subcontractor and request additional supporting evidence for the deduction. If, on the basis of such additional evidence, the deduction still does not meet these standards, the deduction will cease to be permissible 7 days after the contractor or subcontractor and NASA have been notified of the Secretary's decision.

(3) Upon application to and receipt of written permission from the Secretary of Labor and subject to the standards set forth in subparagraph (2) (i), (ii), and (iii) of this paragraph, deductions may be made by a contractor or subcontractor or any affiliated person for membership fees in group benefit or retirement associations, for board and lodging, or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances: *Provided,* However, that the contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision will be sent to the applicant and NASA.

(4) According to and subject to the standards set forth in subparagraph (2) of this paragraph, general permission is hereby granted to make payroll deductions for:

(i) The payment of the purchase price of United States Savings Stamps and Bonds and United States Tax Savings Notes;

(ii) The repayment of loans to or the purchase of shares in credit unions organized and operated according to District of Columbia, Federal, or State credit union statutes;

(iii) Contributions to a Federal Government or quasi-governmental agency;

(iv) The payment of dues or premiums to unaffiliated insurance companies or associations for medical or hospitalization insurance where the employer is not required by Federal, State, or local laws to supply such insurance or benefits;

(v) Contribution to bona fide charities, such as the Red Cross or United Givers Fund; and

(vi) Regular union initiation fees and membership dues where a collective bargaining agreement provides for such deductions. This does not include work permits or special assignments.

(5) When the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under this Subpart.

(6) Nothing herein will be construed to permit any deduction which the contractor or subcontractor knew or, in exercise of good faith, should have known did not meet the standards in subparagraph (2) (i) through (iv) of this paragraph. The Secretary of Labor may notify the contractor or subcontractor that a deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated persons will comply with such general rules and regulations concerning the deductions as the Secretary of Labor will make from time to time, notice of which will have been given to the contractor or subcontractor or any affiliated person making the deduction and to NASA either directly or through publication in the FEDERAL REGISTER.

(c) *Preservation.* Certified payrolls and statements shall be preserved by the installation concerned for a period of 3 years from completion of the contract and shall be produced at the request of the Secretary of Labor at any time during such period.

§ 18–12.404–7 Investigations.

(a) Investigations necessary to assure compliance with contract, statutory, and regulatory requirements shall be made. If feasible, contracts of 6 months or less duration shall be investigated before final payment is made. Contracts of longer duration shall be investigated as frequently as may be necessary. Such investigations shall include interviews of employees on a sampling basis.

(b) Special investigations in detail shall be made when required by complaints or other evidence of violations. Complaints of violations shall be given priority.

(c) Statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to the employer without the consent of the employee.

§ 18–12.404–8 Enforcement reports.

(a) Where underpayments total $500 or more, or are willful, the contracting officer concerned shall furnish to the Department of Labor, through the Office of Labor Relations, NASA Headquarters (Code KL), as soon as practicable, a detailed enforcement report. Such reports shall include a statement of the findings as to the violations and information as to restitution made, payment deductions, contract terminations, and the names and addresses of the workers,

contractors and subcontractors concerned. (For willful violations of a criminal statute, see § 18–12.404–8(c).)

(b) Where underpayments total less than $500 and are nonwillful, and where restitution has been effected and future compliance assured, no report need be furnished the Department of Labor, unless the Department of Labor has expressly requested that the investigation be made. In the latter case, the contracting officer shall submit through the Office of Labor Relations (Code KL), a factual summary report in accordance with 29 CFR 5.7(a)(1).

(c) Where there is substantial evidence that violations are willful and in breach of the False Affidavits Act (18 U.S.C. 1001) or other criminal statute, the matter shall be forwarded to the Attorney General for prosecution, and the Secretary of Labor shall be informed of such action.

§ 18–12.404–9 Suspensions and deductions of contract payments.

In the event of failure or refusal to pay all or any part of the wages due workers, the contracting officer may suspend further contract payments to the contractor in amounts equal to such unpaid wages and liquidated damages which may be due until either restitution has been made directly by the contractor or subcontractor concerned or deductions against payment vouchers are made as provided in this § 18–12.404. If such failure or refusal appears continuing or willful, or in the event of any other failure and refusal to comply with contract, statutory, and regulatory requirements, the contracting officer may suspend all future contract payments to the contractor until such violations have ceased. If restitution is not made directly by the contractor or subcontractor within a reasonable time or, in any event, prior to final payment under the contract, the contracting officer shall submit with the contractor's payment voucher or vouchers a "Schedule of Withholdings Under the Davis-Bacon Act" (40 U.S.C. 276a) (Standard Form 1093), and a statement of the amount to be withheld as liquidated damages. These amounts shall be deducted from the payments made to the contractor, and the amounts shown to be due the workers shall be deposited in the Treasury.

§ 18–12.404–10 Restitution.

Restitution of amounts due workers may be permitted at any time at the volition of the contractor or subcontractor and may be ordered by NASA whenever wage underpayments are found to be nonwillful.

§ 18–12.404–11 Contract terminations.

Whenever a contract is terminated for violation of the labor standards provisions, a report shall be made by the NASA contracting officer to the Director of Procurement for submission to the Secretary of Labor and the Comptroller General. The report shall include the name and address of the terminated contractor or subcontractor, the name and address of the contractor or subcontractor who is to complete the work, the amount and number of the latter's contract, and a description of the work thereunder.

§ 18–12.404–12 Cooperation with Department of Labor.

NASA will cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, NASA contracting officers shall furnish to the Secretary of Labor any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract work.

§ 18–12.404–13 Reporting construction contract awards.

The contracting officer shall promptly report all construction contract awards of $25,000 and over subject to the Davis-Bacon Act to the Bureau of the Census, Department of Commerce, on Census Bureau Form 16–19 (Construction Contract Award Notification).

Subpart 18–12.6—Walsh-Healey Public Contracts Act

§ 18–12.601 Statutory requirements.

In accordance with the requirements of the Walsh-Healey Public Contracts Act (Act of June 30, 1936, as amended, 41 U.S.C. 35–45), all contracts subject to said Act entered into by NASA for the manufacture or furnishing of supplies in any amount exceeding $10,000:

(a) Shall be with manufacturers or regular dealers (§§ 18–1.218 and 18–1.228); and

(b) Shall incorporate by reference the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

§ 18–12.602 Applicability.

§ 18–12.602–1 General.

The requirement set forth in § 18–12.601 applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Puerto Rico, the Virgin Islands, or the District of Columbia, and which exceed or may exceed $10,000 in amount.

§ 18–12.602–2 Department of Labor regulations and interpretations.

Pursuant to the Walsh-Healey Act, the Secretary of Labor has issued detailed regulations and interpretations as to the coverage of the Act, and exemptions and procedures thereunder. These regulations and interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations." In addition to the interpretations stated in the document, attention is directed to an opinion of the Department of Labor that contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Walsh-Healey Act; and that contracts in an amount exceeding $10,000, which are subsequently modified to a figure of $10,000 or less, are not subject to the said Act with respect to work performed after such modification if the modification is effected by mutual agreement.

§ 18–12.602–3 Procedure for obtaining exemptions with respect to stipulations required by the act.

Section 6 of the Walsh-Healey Public Contracts Act permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of Section 1 of the Act be included in proposals or contracts which are subject to the Act. All requests of present or prospective contractors for exceptions under Section 6 of the Act will be addressed to the Director of Procurement. Such requests shall be in writing, shall be transmitted through the contracting officer, and shall set forth all pertinent information, including the nature of the requested exception, the need therefor, and any action already taken by the contractor to avoid the necessity for the exception.

§ 18–12.603 Responsibility of contracting officers.

Whenever the Walsh-Healey Public Contracts Act is applicable, the contracting officer, pursuant to regulations or instructions issued by the Secretary of Labor, shall:

(a) Inform prospective contractors of the possible applicability of minimum wage determinations;

(b) Furnish to the contractor a poster (Form PC 13);

(c) Furnish to the contractor a form letter (Form PC 12) explaining application of the Walsh-Healey Public Contracts Act and giving instructions for display of the poster;

(d) Prepare and transmit to the Department of Labor 3 copies of Standard Form 99 (Notice of Award of Contract) immediately upon award of contract; and

(e) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Public Contracts Act.

§ 18–12.604 Contract clause.

The contract clause required by this Subpart 18–12.6 is as follows:

WALSH-HEALEY PUBLIC CONTRACTS ACT
(SEPTEMBER 1962)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

Subpart 18–12.7—Fair Labor Standards Act of 1938

§ 18–12.701 Basic statute.

The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S.C. 201–219), as amended, provides for the estab-

lishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), and prohibits oppressive child labor. The Fair Labor Standards Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or foreign commerce, (b) the production of goods for such commerce, or (c) any closely related process or occupation essential to such production.

§ 18–12.703 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act of 1938 shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Subpart 18–12.8—Equal Employment Opportunity

§ 18–12.800 Scope of subpart.

This Subpart 18–12.8 sets forth the policies, procedures, and clauses for use in contracts and grants to carry out the rules and regulations of the President's Committee on Equal Employment Opportunity. (Nondiscrimination provisions applicable to Government leases are set forth in Subpart 18–1.3.)

§ 18–12.801 Policy.

Executive Order 10925, dated March 6, 1961, as amended by Executive Order 11114, dated June 22, 1963, states that discrimination because of race, creed, color, or national origin is contrary to the constitutional principles and policies of the United States, and that it is the plain and positive obligation of the U.S. Government to promote and insure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed by, or seeking employment with, Government contractors. To carry out this policy, the President's Committee on Equal Employment Opportunity was created by Executive Order 10925 to provide regulations, guidelines, and instructions to Government agencies. The head of each contracting agency was made primarily responsible for obtaining compliance by any contractor or subcontractor with the provisions of the Executive Order and the rules, regulations, and orders of the President's Committee.

§ 18–12.802 Clauses for contracts, grants or other arrangements.

§ 18–12.802–1 NASA contracts.

All NASA contracts, including bilateral modifications thereof, shall include the "Equal Opportunity" clause set forth below unless exempt under the provisions of § 18–12.803, or exempted pursuant to § 18–12.804. Government bills of lading may incorporate the clause by reference.

EQUAL OPPORTUNITY (JULY 1964)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order 10925 of March 6, 1961 (26 F.R. 1977), as amended by Executive Order 11114 of June 22, 1963 (28 F.R. 6485).)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, so that such provisions will be binding upon each subcontractor or vendor.* The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

*Unless otherwise provided, the "Equal Opportunity" clause is not required to be inserted in subcontracts below the second tier, except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Committee's rules and regulations) in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the "Equal Opportunity" clause.

§ 18–12.802–2 Federally assisted construction under grants and arrangements.

Unless exempt under the provisions of § 18–12.803 or exempted pursuant to § 18–12.804, each NASA grant or arrangement other than a contract, and bilateral modifications thereof, involving a Federally assisted construction contract shall include the following "Equal Opportunity in Federally Assisted Construction Contracts" clause:

EQUAL OPPORTUNITY IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS (JANUARY 1964)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order 10925 of March 6, 1961 (26 F.R. 1977), as amended by Executive Order 11114 of June 22, 1963 (28 F.R. 6485).)

(a) As used in this clause, the following terms have the meanings set forth below:

(1) *Applicant* means an applicant for Federal assistance or, as determined by regulation of an administering agency, other program participant, with respect to whom an application for any grant, loan, insurance, or guarantee, or change therein, is not finally acted upon prior to July 22, 1963, and it includes such an applicant after becoming a recipient of such Federal assistance.

(2) *Construction work* means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services.

(3) *Modification* means any written alteration in terms and conditions of a contract accomplished by bilateral action of the parties to the contract, including supplemental agreements and amendments.

(4) *Federally assisted construction contract* means any binding legal agreement or modification thereof between an applicant and a Contractor for construction work which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to any Federal program involving a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee; or any approved application or modification thereof for a grant, contract, loan, in-

surance or guarantee under which the applicant itself performs construction work other than through the permanent work force directly employed by an agency of Government.

(5) *Administering agency* means the Government agency administering this Federally assisted construction contract.

(6) *Subcontract* means any agreement made or purchase order executed by a prime Contractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract.

(7) *Prime Contractor* means any person holding a contract.

(8) *Subcontractor* means any person holding a subcontract. *First-tier subcontractor* refers to a subcontractor holding a subcontract with a prime Contractor. *Second-tier subcontractor* refer to a subcontractor holding a subcontract with a first-tier subcontractor.

(9) *Site of construction* means the physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition or repair, and any temporary location or facility established by a Contractor or subcontractor specifically to meet the demands of his contract or subcontract.

(b) The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the President's Committee on Equal Employment Opportunity, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the Equal Opportunity clause set forth in paragraph (c) below.

(c) The Equal Opportunity clause is as follows:

EQUAL OPPORTUNITY (JANUARY 1964)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order 10925 of March 6, 1961 (26 F.R. 1977), as amended by Executive Order 11114 of June 22, 1963 (28 F.R. 6485).) During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The Contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(d) The applicant further agrees that it will be bound by the above Equal Opportunity clause in any Federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of the Government.

(e) The applicant agrees that it will cooperate actively with the administering agency and the President's Committee on Equal Employment Opportunity in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Committee, that it will furnish the administering agency and the Committee such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11114 with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to Part III, Subpart D, of Executive Order 10925 and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Committee pursuant to Part III, Subpart D, of Executive Order 10925.

(f) In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may cancel, terminate, or suspend in whole or in part this grant (loan, insurance, guarantee), may refrain from extending any further assistance under any of its programs subject to Executive Order 11114 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

§ 18–12.802–4 Requirements for invitations for bids or requests for proposals.

Each invitation for bids or request for proposals not exempt from the provisions of the "Equal Opportunity" clause under § 18–12.803 or exempted pursuant to § 18–12.804 shall include the following representation to be accomplished by the bidder or offeror:

The bidder (or offeror) represents that he ☐ has, ☐ has not participated in a previous contract or subcontract subject to either the Equal Opportunity clause herein or the clause originally contained in Section 301 of Executive Order 10925; that he ☐ has, ☐ has not filed all required compliance reports; and that representations indicating submissions of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (*The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.*) (May 1964.)

In any case where a bidder or offeror indicates that such reports have not been filed, award should be withheld, pending the receipt of a representation from the bidder of offeror that he has submitted all required compliance reports and that he will not make awards to proposed subcontractors until he has obtained signed statements from them that they have submitted required compliance reports, unless the circumstances in the particular case will not permit the award to be withheld. The contract file should be documented to show the basis upon which it was determined to make the award to the bidder or offeror without submission by him of the representation. This should not be interpreted to permit award to concerns known to be in established violation.

§ 18–12.803 Applicability and exemptions.

Subject to the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity or the Executive Vice Chairman thereof, or such further rules, regulations, and relevant orders as they may hereafter issue, the "Equal Opportunity" clause or the "Equal Opportunity in Federally Assisted Construction Contracts" clause need not be included in the following:

(a) Contracts or subcontracts or grants not involving the employment of persons;

(b) Contracts or subcontracts or grants not exceeding $10,000, except Government bills of lading. In determining the applicability of this exemption to any Federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern;

(c) Contracts or subcontracts for standard commercial supplies or raw materials not in excess of $100,000;

(d) Contracts or subcontracts or grants to be performed outside the United States where no recruitment of workers within the United States is involved (where a contract involves performance of work or recruitment of workers both within and outside the United States, the "Equal Opportunity" and/or the "Equal Opportunity in Federally Assisted Construction Contracts" clause will be included in the contract but will be applicable only to work and recruitment within the United States—United States as used herein includes the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States);

(e) Contracts for the sale of Government property, where no appreciable amount of work is involved;

(f) Contracts and subcontracts for an indefinite quantity (including, without limitation, open-end, requirement type, Federal Supply Schedule, and "call-type" contracts, and purchase notice agreements) which are not to extend beyond one year, if the contracting officer (or in the case of subcontracting, the prime contractor or subcontractor issuing the subcontract) determines that the amounts to be ordered are not reasonably expected to exceed $100,000 for standard commercial supplies and raw materials, or $10,000 for all other contracts and subcontracts; or

(g) Contracts or subcontracts exempted pursuant to § 18–12.804.

§ 18–12.804 Requests for exemptions.

Where special circumstances indicate that use in a contract of the Equal Opportunity clause set forth in § 18–12.802–1, or that the use in a grant or arrangement other than a contract of the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2, would not be in the national interest, the contracting officer should submit a request through the Director of Procurement to the Administrator for authority to omit or modify the clause. Under such circumstances, the Administrator may request an exemption from the requirements of the clause. Such requests will be directed to the Executive Vice Chairman of the President's Committee, who will rule upon the request in accordance with the Committee's regulations. Prior to the submission of such requests, the Director of the NASA installation concerned or his designee for the purpose will, in appropriate cases, personally discuss with the head of the company concerned, the inclusion of the clause in the procurement under consideration.

§ 18–12.805 Posting of nondiscrimination notices.

In the case of each contract or grant containing the applicable clause, the contracting officer will furnish to the contractor or grantee an appropriate number of copies of the notice entitled "Equal Employment Opportunity" (listed in the GSA Stores Stock Catalog as Item No. 7530–338–5437 for the 12½ x 18¼-inch size, and as Item No. 7530–338–5448 for the 8½ x 12-inch size) and Standard Form 38, June 1961, entitled "Nondiscrimination in Employment," for notification to labor unions or other organizations of workers. The procurement offices shall obtain these documents from appropriate Federal Supply Service Regional Stores Stock Depots; contractors and grantees shall obtain from the procurement offices copies for subcontractors.

Subpart 18–12.9—Employment Restrictions for Security Purposes

§ 18–12.901 Hiring restrictions on classified contracts.

By virtue of an agreement between NASA and the Department of Defense, the Department of Defense Industrial Security Program has been made applicable to NASA. Accordingly, the regulations of such program shall apply to the employment of any individual on any contract classified "Top Secret," "Secret," or "Confidential."

§ 18–12.902 Responsibilities of contractors to employees.

In connection with all classified contracts, it shall be the policy of NASA to require that a contractor shall be responsible for furnishing to the contracting officer (a) any requested information with respect to his employees, and (b) information and reports regarding any subversive activities of his employees.

PART 18–13—GOVERNMENT PROPERTY

Sec.
18–13.000 Scope of part.

Subpart 18–13.1—General

18–13.100 Scope of subpart.
18–13.101 Definitions.
18–13.101–1 Property.
18–13.101–2 Government property.
18–13.101–3 Contractor-furnished property.
18–13.101–4 Material.
18–13.101–5 Special tooling.
18–13.101–6 Industrial facility.
18–13.101–7 Industrial property.
18–13.101–8 Nonseverable industrial facility.
18–13.101–9 Plant equipment.
18–13.101–10 Production equipment.
18–13.101–11 Machine tools.
18–13.101–12 Accessory item.
18–13.101–13 Auxiliary item.
18–13.101–14 Salvage.
18–13.101–15 Scrap.
18–13.101–16 Related procurement contract.
18–13.101–17 Facilities contract.
18–13.101–18 Nonprofit institution or organization.
18–13.102 General policy.
18–13.102–1 Materials.
18–13.102–2 Special tooling.
18–13.102–3 Facilities.
18–13.103 Control of Government property.
18–13.104 Responsibility and liability for Government property.
18–13.104–1 Responsibility of prime contractors for Government property.
18–13.104–2 Liability of subcontractors for Government property.
18–13.150 Designation of property administrators.
18–13.150–1 Designation of Military Department property administrators.
18–13.150–2 Designation of NASA property administrators.
18–13.150–3 Designation of secondary property administrators for subcontracts or secondary sites.
18–13.151 Disposition of excess property and residual inventories.

Subpart 18–13.2—Material

18–13.200 Scope of subpart.
18–13.201 Fixed-price contracts.
18–13.202 Cost-reimbursement type contracts.
18–13.203 Disposal.

Subpart 18–13.3—Special Tooling

18–13.300 Scope of subpart.
18–13.301 Fixed-price procurement—Government-furnished special tooling.
18–13.302 Fixed-price procurement—contractor-furnished or acquired special tooling.
18–13.303 Fixed-price procurement—general policy on acquiring special tooling.
18–13.304 Fixed-price procurement—special tooling furnished or acquired by subcontractors.
18–13.305 Cost-reimbursement type contract—Government-furnished special tooling.
18–13.306 Fixed-price or cost-reimbursment type contract—special consideration for tooling with commercial use.
18–13.307 Disposal of Government-owned special tooling.

Subpart 18–13.4—Industrial Facilities

18–13.400 Scope of subpart.
18–13.401 Award of related procurement contracts.
18–13.401–1 Contract provisions where facilities are provided under related procurement contracts.
18–13.401–2 Related procurement contracts requiring the use of Government facilities in possession of a contractor.
18–13.401–3 Related procurement contracts requiring the provision of additional facilities.
18–13.401–4 Facilities clause for inclusion in related procurement contracts requiring the provision of additional facilities under separate contracts.
18–13.401–5 Facilities for subcontractors on a no-charge basis.
18–13.401–6 Procurement by other Government agencies requiring the use of NASA facilities already with the contractor.
18–13.402 Separate facilities contracts.
18–13.402–1 General requirements for separate facilities contracts.
18–13.402–2 Acquisition, use, and consolidated facilities contracts.
18–13.403 Application of acquisition, use, and consolidated facilities contracts.
18–13.405 Title.
18–13.406 Nonseverable industrial facilities.
18–13.407 Right of contractor to use.
18–13.408 Maintenance.
18–13.409 Identification and records.
18–13.410 Late delivery diversion and substitution.
18–13.411 Risk of loss or damage and liability.
18–13.412 Unusable or unneeded facilities.
18–13.413 Termination of facilities contracts.
18–13.413–1 Termination by the Government.
18–13.413–2 Termination by contractor.
18–13.414 Standby provisions.
18–13.415 Disposition.
18–13.416 Facilities contract clauses.

Subpart 18–13.5—Contract Clauses

18–13.500 Scope of subpart.
18–13.501 Applicability.
18–13.502 Government-furnished property clause for fixed-price supply contracts.
18–13.502–1 Short form clause.
18–13.502–2 Long form clause.
18–13.503 Government property clause for cost - reimbursement type contracts.
18–13.504 Special tooling clause for fixed-price contracts.
18–13.505 Government-furnished property clauses for fixed-price type research and development contracts with nonprofit institutions.
18–13.505–1 Short form clause.
18–13.505–2 Long form clause.
18–13.506 Government property clauses for cost-reimbursement type research and development contracts with nonprofit institutions.
18–13.506–1 Short form clause.
18–13.506–2 Long form clause.

Subpart 18–13.6—Use of Government-Owned Industrial Facilities on Work Other Than for NASA

18–13.600 Scope of subpart.
18–13.601 Rental.
18–13.601–1 General.
18–13.601–2 Rental rates.
18–13.603 Production equipment.

Subpart 18–13.7—Government-Owned Industrial Facilities and Special Tooling on Work for Foreign Governments

18–13.700 Scope of subpart.
18–13.701 Use without charge.

Subpart 18–13.8—Vesting of Title to Equipment in Nonprofit Educational or Research Institutions

18–13.800 Scope.

Subpart 18–13.50—Utilization of Idle Production Equipment

18–13.5000 Scope of subpart.
18–13.5002 Procedures.
18–13.5003 Transfers from NASA to the military departments.

Subpart 18–13.51—Industrial Facilities Expansion Application and Approval

18–13.5100 Scope of subpart.
18–13.5101 Consideration of facilities expansion applications.
18–13.5102 Procedure for determining facilities expansion.
18–13.5103 Processing the application.
18–13.5104 Administration of approved facilities application.
18–13.5105 Format for industrial facilities application.
18–13.5106 Format for presenting justification data.

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§ 18–13.000 Scope of part.

This Part 18–13 sets forth the general policies of NASA with respect to providing property for use by contractors in connection with procurement by NASA and sets forth applicable contract clauses.

Subpart 18–13.1—General

§ 18–13.100 Scope of subpart.

This Subpart 18–13.1 contains definitions of terms used throughout this Part 18–13 and a statement of general policy.

§ 18–13.101 Definitions.

As used in this Part 18–13 the following terms have the meaning stated in this section.

§ 18–13.101–1 Property.

"Property" includes all physical property, both real and personal. For the purpose of this Part 18–13, property consists of and is treated under three separate categories—material, special tooling, and industrial facilities.

§ 18–13.101–2 Government property.

"Government property" means all property owned by, or leased to, the Government or acquired by the Government under the terms of a contract; except that property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments shall not, for the purpose of this Part, be classified as Government property. With this exception, Government property includes both Government-furnished property and contractor-acquired property as defined in paragraphs (a) and (b) of this section.

(a) "Government-furnished property" is property in the possession of or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and

(b) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, pursuant to the terms of which title is vested in the Government.

The term "provide" as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property" is intended to include both Government-furnished property and contractor-acquired property.

§ 18–13.101–3 Contractor-furnished property.

"Contractor-furnished property" means all property other than Government property used by the contractor in the performance of a contract.

§ 18–13.101–4 Material.

"Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

§ 18–13.101–5 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract or subcontract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include (a) items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract; (b) consumable small tools; or (c) general or special machine tools, or similar capital items.

§ 18–13.101–6 Industrial facility.

"Industrial facility" means property, other than material and special tooling, of use for the performance of a contract or subcontract, including real property and rights therein, buildings, structures, improvements, and plant equipment. Industrial facility is further defined for contracting and costing purposes as including all property acquired for the performance of a contract, and not incorporated in the contract end items, of a type which normally would be capitalized for the contractor's Federal income tax purposes if the contractor retained title thereto. For this purpose the term "property" includes improvements and attachments and any other items the cost of which would be so capitalized.

§ 18–13.101–7 Industrial property.

"Industrial property," as distinguished from other NASA property, means any contractor-acquired or Government-furnished property, including materials special tooling, and industrial facilities, furnished or acquired in the performance of a contract or subcontract.

§ 18–13.101–8 Nonseverable industrial facility.

"Nonseverable industrial facility" means an industrial facility which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

§ 18–13.101–9 Plant equipment.

"Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) which:

(a) Has a unit cost in excess of $200;

(b) Has a life expectancy of one year or longer; and

(c) Will not be substantially modified so as to lose its identity or will not be incorporated into other equipment.

§ 18–13.101–10 Production equipment.

"Production equipment" means those items of plant equipment located within a manufacturing, processing, assembly, or service establishment and used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating, or treating production materials or work in process.

§ 18–13.101–11 Machine tools.

"Machine tools" means those items of production equipment which are power-driven, nonportable machines used for cutting, abrading, grinding, shaping, or forming metal.

§ 18–13.101–12 Accessory item.

"Accessory item" means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

§ 18–13.101–13 Auxiliary item.

"Auxiliary item" means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

§ 18–13.101–14 Salvage.

"Salvage" means personal property that has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use as a unit is clearly impracticable. Repairs or rehabilitation estimated to cost in excess of 65 percent of acquisition cost would be considered "clearly impracticable" for purposes of this definition.

§ 18–13.101–15 Scrap.

"Scrap" means property that has no reasonable prospect of being sold except for the recovery of value of its basic material content.

§ 18–13.101–16 Related procurement contract.

"Related procurement contract" means a Government contract for furnishing supplies or services of any description for the performance of which the use of the facilities is or may be authorized.

§ 18–13.101–17 Facilities contract.

"Facilities contract" means a contract under which industrial facilities may either be acquired, be furnished, and/or be used in connection with the performance of a separate contract or contracts for supplies or services.

§ 18–13.101–18 Nonprofit institution or organization.

"Nonprofit institution or organization" means any corporation, foundation, trust, or institution operated for educational or primarily scientific purposes which is not organized for profit and no part of whose net earnings inures to the profit of any private shareholder or individual.

§ 18–13.102 General policy.

§ 18–13.102–1 Materials.

Contractors will furnish all materials required for the performance of Government contracts. Exceptions to this policy may be made by a NASA installation when the procurement officer considers that it will be in the best interest of the Government to furnish materials in a particular case, or with respect to a particular type of procurement, by reason of economy, standardization, expediting production, or other circumstances.

§ 18–13.102–2 Special tooling.

NASA shall furnish special tooling under NASA control which is determined by NASA to be available, when such furnishing does not interfere with essential production or program schedules and the cost of such furnishing is less than the cost to the Government of the contractor acquiring or furnishing new special tooling. In determining the cost to the Government of furnishing special tooling to a contractor, consideration shall be given to:

(a) The cost of the preparation of such special tooling and the shipment thereof to the plant of the contractor;

(b) The cost of adapting such special tooling to meet the requirements of the contract;

(c) The cost incident to any delays which may be occasioned; and

(d) The cost of new special tooling.

§ 18–13.102–3 Facilities.

(a) Contractors shall furnish all facilities required for the performance of Government contracts. However, facilities may be provided by the Government for use by contractors when such providing is determined by the Director of the NASA installation concerned to be necessary to meet essential production

or program schedules, or when otherwise determined by the Administrator, NASA, to be in the best interest of the Government. Before any Government facilities are provided to a contractor, careful consideration must be given to the full utilization of subcontractors possessing adequate and available capacity to meet NASA requirements. Consistent with the policy that contractors shall not be given competitive advantage through use of Government-provided facilities, the willingness of a contractor to provide and use his own facilities in lieu of Government-provided facilities will be a major factor of consideration during the negotiation process.

(b) Each contract, lease, or other agreement under which Government-owned industrial facilities may be used shall require periodic payment or credit of rent or use charge or, when such facilities are provided by the Government without charge, shall:

(1) Provide that no charge for the use of such facilities shall be included in the price or prices of Government supply or service contracts for which such facilities are used; and

(2) Be documented to show the supply and service contracts for which such facilities are used on the basis of no charge being made in the supply or service contract price or prices.

The agreement shall specify a rental or use charge as a periodic dollar amount or, where this is inappropriate under the circumstances, it shall set forth the method of computing the amount due. The amount of the rental or use charge shall be determined in accordance with § 18–13.601–2. In pricing supply and service contracts for which the use of such facilities is authorized on a no-charge basis, care must be taken to screen out any element of cost, whether direct or indirect, on account of rentals charged for such facilities under other supply or service contracts.

(c) In those cases where a contractor is authorized to acquire facilities at Government expense, the contract shall contain a clause which limits the contractor's reimbursement to his actual cost of acquiring the facilities, exclusive of profit or fee

§ 18–13.103 Control of Government property.

The "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors," Appendix C, ASPR, (32 CFR § 30.3) and the NASA Industrial Property Control Manual (NPC–105) are incorporated by reference into this Part 18–13 and made a part hereof.

§ 18–13.104 Responsibility and liability for Government property.

§ 18–13.104–1 Responsibility of prime contractors for Government property.

Except with respect to advertised fixed-price contracts and contracts of the type set forth in § 18–13.502–1, it is the basic policy of the Government not to hold the prime contractor responsible for loss of or damage to Government property caused by certain perils. This policy, as applied in facilities contracts, is set forth in § 18–13.411, and as implemented for use in other types of contracts, is contained in contract clauses set forth in Subpart 18–13.5.

§ 18–13.104–2 Liability of subcontractors for Government property.

The prime contractor will be required to hold a subcontractor liable for loss or destruction of, or damage to, Government property in the possession or control of such subcontractor (the prime contractor, nevertheless, remaining responsible to the Government to maintain the records required by NASA Industrial Property Control Manual (NPC–105) or 32 CFR § 30.3): *Provided, however,* That:

(a) A prime contractor on a negotiated fixed-price basis may, with the prior approval of the contracting officer, include in any subcontracts thereunder provisions similar to those contained in Subpart 18–13.5 and designated for use in negotiated fixed-price contracts, with respect to Government property previously furnished to the prime contractor but in the possession or control of the subcontractor; and

(b) A prime contractor on a cost-reimbursement basis may, with the prior approval of the contracting officer—

(1) Include in any cost-reimbursement type subcontract thereunder provisions similar to those contained in the prime contract with respect to Government property in the possession or control of such subcontractor; and

(2) Include in any fixed-price subcontract thereunder provisions similar to those designated for use in negotiated fixed-price contracts, with respect to Government property in the possession or control of such subcontractor.

Contracting officers shall, prior to approving the inclusion in any subcontract of the provisions referred to in this § 18–13.104–2, satisfy themselves that the degree of protection and care to be afforded Government property in the possession or control of any such subcontractor is sufficient at all times to protect the interests of the Government.

§ 18–13.150 Designation of property administrators.

A property administrator shall be designated for each NASA contract involving Government property.

§ 18–13.150–1 Designation of military department property administrators.

(a) *Background.* NASA has entered into agreements with the Military Departments which provide that the Departments will perform for NASA certain functions, including property administration, in connection with the administration of NASA contracts pursuant to the procedures set forth in those agreements. Each of the agreements provides that requests for performance of the functions covered by the agreements will be submitted in writing. For the agreement with the Department of the Army, see NASA Management Instruction 2–3–9; with the Department of the Navy, see NASA Management Instruction 2–3–6; and with the Department of the Air Force, see NASA Management Instruction 2–3–4.

(b) *Policy.* Except as provided in § 18–13.150–2, a property administrator of one of the Military Departments will be requested to administer property for each NASA contract involving Government property.

(c) *Procedure.* (1) The request for designation of a Military Department property administrator will be processed pusuant to the procedures contained in the overall agreements as referenced in paragraph (a) of this section. If other functions in connection with the administration of the contract are not required, the letter should request property administration only. A copy of the contract for which property administration is requested shall be attached to the letter of request and the letter shall include:

(i) A statement regarding NASA utilization, screening, and submission of excess and residual lists pursuant to the requirements of § 18–13.151 and NASA Management Instruction 20–4–2;

(ii) A request that the Military Department furnish to the NASA installation concerned a copy of the letter designating the property administrator.

(2) Appropriate liaison shall be maintained with the Military Department property administrator by the cognizant NASA installation during the life of the contract. When the value of the property so warrants, liaison should include:

(i) A letter to the property administrator calling attention to the inclusion of the NASA Industrial Property Control Manual (NPC–105) in the contract and setting forth any special NASA conditions or requirements with respect to property matters on such contract;

(ii) Personal contact with the property administrator; and

(iii) Periodic visits to the contractor's plant. Such visits should serve the purpose of developing satisfactory working relations, reviewing and evaluating actions taken by the property administrator with respect to NASA property, and resolving any problems which may develop.

(3) A separate file shall be maintained by the cognizant NASA installation for each contract under which property administration has been assigned to a Military Department. Each file shall contain the following:

(i) A copy of the letter designating the property administrator;

(ii) A copy of any letter designating a secondary property administrator in connection with cost-type subcontracts;

(iii) A copy of any letter of the kind described in subparagraph (2) (i) of this paragraph;

(iv) A record of any deviations from standard practice granted by NASA Headquarters;

(v) A record of property audits performed by NASA or the cognizant Military Department;

(vi) A record of deficiencies which required resolution on the part of the contracting officer;

(vii) Copies of correspondence pertaining to property matters; and

(viii) Final clearance data for Government property.

§ 18–13.150–2 Designation of NASA property administrators.

(a) *Policy.* Cognizant contracting officers may designate NASA employees as property administrators pursuant to the following criteria:

(1) Availability of a qualified industrial property specialist;

(2) Dollar value of the property to be administered; and

(3) Geographic location of the property.

(b) *Procedure.* Designation of a NASA property administrator will be effected by a letter, signed by the contracting officer, addressed to the individual by name, designating him as property administrator for the contract specified.

§ 18–13.150–3 Designation of secondary property administrators for subcontracts or secondary sites.

(a) When it is determined to designate a secondary property administrator for a subcontract or a contractor's secondary site, the NASA property administrator assigned to the prime contract will request such designation. The letter of request for the secondary appointment should be directed to the Military Department cognizant of the subcontractor's plant or, in the event that a NASA property administrator has been assigned to the subcontractor's plant, to the cognizant NASA field installation.

(b) When the prime contractor establishes a secondary site of contract work for which secondary designation is not required, "courtesy surveillance" may be requested of the Military Department cognizant of such site. However, in such cases, property administration should be retained by the NASA property administrator, and no formal designation should be requested of the Military Department concerned.

§ 18–13.151 Disposition of excess property and residual inventories.

Excess property and residual inventories shall be disposed of in accordance with the procedures contained in Part 18.8 of this chapter and NASA Management Instruction 20–4–2.

Subpart 18–13.2—Material

§ 18–13.200 Scope of subpart.

This Subpart 18–13.2 sets forth policies governing material furnished to contractors in connection with the performance of contracts for supplies or services.

§ 18–13.201 Fixed-price contracts.

Where supplies or services are contracted for on a fixed-price basis, material may be furnished to the contractor in accordance with the policy stated in § 18–13.102. Where a contract is to be entered into as a result of formal advertising, material to be furnished by the Government shall be set forth in the invitation for bids. At any time after a fixed-price contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be amended by the parties to provide for the furnishing of Government material or to increase the amount to be furnished: *Provided,* The Government receives adequate consideration for such amendment. Pursuant to the clauses set forth in §§ 18–13.502–1 and 18–13.502–2, the Government may decrease the material furnished or to be furnished under the contract, with equitable adjustment, if appropriate, in the delivery terms, prices, or other contractual provisions affected thereby. When a contracting officer determines that a contemplated decrease in material would render it inequitable to require performance of the contract, in lieu of issuance of a notice in writing providing for such a decrease he may terminate the contract, in whole or in part, pursuant to the clause entitled "Termination for the Convenience of the Government."

§ 18–13.202 Cost-reimbursement type contracts.

Where supplies or services are procured under a cost-reimbursement type contract, material may be furnished to the contractor in accordance with the policy stated in § 18–13.102. At any time after a cost-reimbursement type contract has been entered into, the contract may be amended by the parties to provide for the furnishing of Government material, or to increase or decrease the amount to be furnished under the contract, with equitable adjustment, if appropriate, in delivery terms, fixed-fee, or other contractual provisions affected thereby.

§ 18–13.203 Disposal.

Disposal of residual Government material shall be in accordance with NASA Management Instruction 20–4–2, pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

Subpart 18–13.3—Special Tooling

§ 18–13.300 Scope of subpart.

This Subpart 18–13.3 sets forth policies governing the acquisition, furnishing, and disposition of special tooling required for the performance of contracts for supplies or services.

§ 18–13.301 Fixed-price procurement—Government-furnished special tooling.

Where supplies or services are contracted for on a fixed-price basis, special tooling required for performance of the contract may be furnished to the contractor in accordance with the policy stated in § 18–13.102–2. Where a contract is to be entered into as a result of formal advertising, special tooling to be furnished by the Government shall be stated in the invitation for bids. At any time after a fixed-price contract has been entered into, whether as a result of formal advertising or of negotiation, the contract may be amended by the parties to provide for the furnishing by the Government of special tooling, or to increase the Government-furnished special tooling: *Provided,* Such furnishings or increase is for the benefit of the Government and the Government receives adequate consideration for such amendment. Pursuant to the clauses set forth in §§ 18–13.502–1 and 18–13.502–2, the Government may decrease the special tooling furnished or to be furnished under the contract, with equitable adjustment, if appropriate, in the delivery terms, price, or other contractual provisions affected thereby. When a contracting officer determines that a contemplated decrease in special tooling would render it inequitable to require performance of the contract, in lieu of issuance of a notice in writing providing for such a decrease he may terminate the contract, in whole or in part, pursuant to the clause entitled "Termination for the Convenience of the Government."

§ 18–13.302 Fixed-price procurement—contractor-furnished or acquired special tooling.

Where special tooling required for the performance of a fixed-price contract for supplies or services is not furnished by the Government, newly made or acquired special tooling may be furnished or acquired by the contractor under one of the following arrangements:

(a) The contract may provide for the acquisition of such special tooling by the contractor and the delivery thereof to the Government as an end item under the contract. In any such case, the rights of the parties in special tooling shall be governed by the provisions of the contract and the Schedule; or

(b) Where the contract does not provide for deliver of such special tooling as an end item under the contract, the clause set forth in § 18–13.504 shall be used.

§ 18–13.303 Fixed-price procurement—general policy on acquiring special tooling.

In determining whether special tooling should be acquired by the Government as a separate end item under the contract or Schedule, or in exercising the Government's rights under the "Special Tooling" clause set forth in § 18–13.504, the contracting officer shall take into consideration the following factors:

(a) The current or probable future need of the Government for the items of special tooling involved;

(b) The residual value of such items;

(c) Administrative and other expense incident to preparation, handling, and storage of such items;

(d) The probable cost of reproduction of such items in event of future procurement;

(e) The probable cost of making such items available in the event of future procurement, and the probable reduc-

tion in price of such future procurement; and

(f) The amount offered by the contractor for the right to retain such items.

§ 18–13.304 Fixed-price procurement—special tooling furnished or acquired by subcontractors.

In the event the prime contractor enters into subcontracts or issues purchase orders, the performance of which involves the use of special tooling to be furnished or acquired by the subcontractor or vendor, there shall be included in such subcontracts or purchase orders appropriate provisions to the extent required by paragraph (k) (or by alternate paragraph (k)) of the "Special Tooling" clause set forth in § 18–13.504 giving the prime contractor rights comparable to those granted to the Government by such clause. The prime contractor shall exercise his rights in such special tooling for the benefit of the Government in accordance with directions issued by the contracting officer, who shall be guided by the policies set forth in § 18–13.303.

§ 18–13.305 Cost-reimbursement type contract—Government-furnished special tooling.

Where supplies or services are contracted for on a cost-reimbursement basis, special tooling may be furnished to the contractor in accordance with the policy stated in § 18–13.102–2. At any time after a cost-reimbursement type contract has been entered into, the contract may be amended by the parties to provide for the furnishing by the Government of special tooling, or to increase or decrease the amount to be furnished under the contract, with equitable adjustment, if appropriate, in delivery terms, fixed-fee, or other contractual provisions affected thereby. Special tooling furnished by the Government or acquired by the contractor shall be subject to the provisions of the "Government Property" clause set forth in § 18–13.503.

§ 18–13.306 Fixed-price or cost-reimbursement type contract—special consideration for tooling with commercial use.

When performance of a fixed-price or cost-reimbursement type contract requires a contractor to acquire tooling as defined in § 18–13.101–5 except that it has commercial use, the contract may appropriately provide therefor, giving due consideration to the best interest of the Government and the equities of the contractor.

§ 18–13.307 Disposal of Government-owned special tooling.

Special tooling furnished by the Government or to which the Government has taken title under the applicable contract clause shall be disposed of in accordance with NASA Management Instruction 20–4–2, pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

Subpart 18–13.4—Industrial Facilities

§ 18–13.400 Scope of subpart.

This Subpart 18–13.4 sets forth policies with respect to providing industrial facilities for use by contractors in connection with procurement by NASA and for other incidental uses.

§ 18–13.401 Award of related procurement contracts.

Related procurement contracts (see § 18–13.101–16) based upon the use of industrial facilities to be provided by the Government should not be awarded until the scope and magnitude of the facilities required have been determined and authorized in accordance with § 18–13.102–3.

§ 18–13.401–1 Contract provisions where facilities are provided under related procurement contracts.

(a) Where facilities are to be provided to the contractor under a related procurement contract, the requirements in subparagraphs (1) and (2) of this paragraph shall apply.

(1) The appropriate Government Property clause set forth in Subpart 18–13.5 shall be included in the contract.

(2) The following clause, with the Schedule terms called for therein, shall be included in the contract:

FACILITIES ACQUIRED OR FABRICATED (JANUARY 1964)

Subject to the approval of the contracting officer, the contractor may acquire or fabricate the facilities listed in the Schedule of the contract. Costs incurred therefor will be allowable costs, provided that the contractor shall have no obligation to acquire or fabricate facilities and the Government shall have no obligation to reimburse any amount for such facilities in excess of the total estimated facilities costs set forth in the Schedule, unless this contract is amended to increase such amount. No fee will be payable based on the cost of facilities acquired or fabricated hereunder, except that the price to be charged the Government for facilities fabricated by the contractor may include a reasonable fee. The facilities acquired or fabricated shall be considered Government property and subject to the provisions of the Government Property clause of this contract.

(3) If the facilities are nonseverable, the contract shall include, as a part thereof or as an ancillary written document signed by the contractor and incorporated by reference in the contract, an agreement as to the manner in which the facilities will be disposed of upon completion or termination of the contract. Detailed instructions concerning the provisions which should be contained in the agreement for facilities other than nonseverable facilities are set forth in § 18–13.415. § 18–13.406(b) and (d) (1) and (2) require an advance written agreement covering the disposition of nonseverable facilities to be disposed of under the authority of those provisions.

(4) If the contractor fabricates the facilities utilizing his own plant and technical capability, the contracting officer may allow a reasonable fee as a part of the cost of the facilities to the Government. Normally, such fee will be less than that allowed for the work constituting the subject matter of the contract and will be negotiated solely on the basis of the fabrication effort to construct the facilities. The contractor shall not be permitted to include the actual or estimated cost of facilities which are acquired by him for the Government in the base cost of the contract on which his fee is negotiated. The contract file shall be documented to justify any fee allowance agreed upon.

(5) A copy of the executed contract or modification shall be forwarded to the Office of Procurement (Code KDF).

(b) The agreement for the disposition of facilities, made in accordance with paragraph (a)(3) of this section, shall be incorporated by reference in each subsequent cost-type related procurement contract utilizing the facilities covered by the agreement, and in any separate facilities contract to which the facilities may be transferred.

§ 18–13.401–2 Related procurement contracts requiring the use of Government facilities in possession of a contractor.

When a related procurement contract or modification thereto is negotiated on the basis of the use of facilities which have been previously provided (or are currently being provided) by NASA or another Government agency to the prime contractor or his subcontractors, the procedures set forth in this section shall apply.

(a) Prior to award, the contracting officer shall obtain permission for use from the contracting officer administering the contract which covers use of the facilities and shall document each contract file accordingly. This documentation shall accompany each contract file submitted to NASA Headquarters for review.

(b) Facilities which are authorized for use by the prime contractors shall be identified by facilities contract number(s).

(c) Where no-charge use of facilities is authorized for subcontract work which will support the prime related procurement contract, the names of subcontractors, with the respective facilities contract numbers and items to be produced, shall be inserted in the related procurement contract or modification thereto pursuant to § 18–13.401–5.

(d) If the use of the facilities is authorized on a no-charge basis, the contract shall contain the following clause:

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS (MAY 1963)

The Contractor is authorized to use on a no-charge basis, in the performance of this contract, the Government-owned facilities provided to him under the facilities contract identified by number in the Schedule of this contract and in effect on the date of this contract.

§ 18–13.401–3 Related procurement contracts requiring the provision of additional facilities.

Prior to executing a related procurement contract in which it is agreed that additional Government facilities shall be provided, the contracting officer shall determine whether the proposed contractor has in existence a facilities contract with NASA. If so, the contracting officer shall arrange with the contracting officer ad-

ministering the facilities contract to have the proposed additional facilities included under the facilities contract and the related procurement contract shall specify such arrangement. If the proposed contractor does not have a facilities contract with NASA, the contracting officer shall either enter into a separate facilities contract or provide the required facilities under the related procurement contract, subject to the limitations set forth in § 18–13.402.

§ 18–13.401–4 Facilities clause for inclusion in related procurement contracts requiring the provision of additional facilities under separate contracts.

(a) When a related procurement contract, or a modification thereof, is negotiated on the basis that additional facilities will be provided to the contractor under a separate facilities contract (either directly by the Government or by contractor acquisition at Government expense), the following Facilities clause shall be inserted in the Schedule of such related procurement contract:

FACILITIES (JULY 1963)

(a) The terms and conditions of the contract are based on the providing to the Contractor, under separate facilities contract, of certain facilities which are described in ___. Such facilities, as determined by the Contracting Officer, shall be either furnished to the Contractor directly by the Government, or the Contractor shall be authorized to acquire them at Government expense. The parties hereby agree to enter into such a separate facilities contract, or to supplement an existing facilities contract to cover such additional facilities, as the case may be, at the earliest practicable date. Any separate facilities contract shall be made using such applicable contract form, if any, as is prescribed by the NASA Procurement Regulation in effect on the date such facilities contract is executed and shall provide for rent-free use of the facilities in the performance of this contract.

(b) It is agreed that if such facilities are not provided at the time and to the extent as indicated in paragraph (a) above, an equitable adjustment shall, upon timely written request of the Contractor, be made in the terms and conditions of this contract to the extent required by reason of the Government's failure to provide such facilities.

(b) In the blank in paragraph (a) of the clause in paragraph (a) of this section, specifically identify the facilities to be provided, either (1) by referencing the contractor's proposal or that portion thereof which describes the additional facilities to be provided, or (2) by referencing any other document which identifies and describes the facilities, or (3) by identifying and describing in the clause itself the facilities which have been agreed upon as those to be provided. Unless deviations have been granted by the Director of Procurement, NASA Headquarters, all items having an acquisition cost of $500 or less will not be provided by the Government and shall be eliminated from the description inserted in paragraph (a) of the clause in paragraph (a) of this section.

§ 18–13.401–5 Facilities for subcontractors on a no-charge basis.

If it is desired to permit a contractor to let certain of his subcontractors have the benefit of the use of Government facilities in the possession of such subcontractors on a no-charge basis, whether or not the prime contractor is to have the use of facilities on a no-charge basis, the Use of Government Facilities by Subcontractors clause set forth in this section shall be included in the related procurement contract: *Provided*, That (a) the price or the fee of the prime contract is negotiated on the specific understanding that the use of the facilities on a no-charge basis will be permitted in the performance of the specified subcontract items by the specified subcontractors to be set forth in subparagraph (a) of the "Use of Government Facilities by Subcontractors" clause and (b) the subcontractor is not placed in a favored competitive position.

USE OF GOVERNMENT FACILITIES BY SUBCONTRACTORS (APRIL 1962)

(a) The following subcontractors having Government-owned facilities provided under the Facilities contracts set forth below, in effect on the date of this contract, are authorized to use such facilities on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide:

Subcontractor	Facilities contract number	Subcontract item
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(b) If the Contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis: *Provided*,

(i) He determines that such use will not give the subcontractor a favored competitive position; and

(ii) This contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis.

Such subcontracts shall specifically authorize the no-charge use, and require the written approval of the Contracting Officer. No modification to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will, of itself, result in an adequate decreased cost to the Government under this contract.

(c) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustments as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(d) The Contractor agrees that he will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (d).

§ 18–13.401–6 Procurement by other Government agencies requiring the use of NASA facilities already with the contractor.

Use of NASA facilities in the possession of the contractor on contracts of other agencies of the Government may be authorized to the extent that such use will not:

(a) Interfere with the primary NASA purpose of the facilities;

(b) Require the use of the facilities beyond the anticipated date of completion of the primary purpose; and

(c) If, in the case of non-Defense use, the requirements of § 18–13.407(c) are followed.

In such cases, approval for use may be given by the NASA contracting officer administering the facilities contract involved, as required by the terms of such contract. A copy of each such approval granted by the NASA contracting officer administering the facilities contract shall be forwarded to the Office of Procurement (Code KDF).

§ 18–13.402 Separate facilities contracts.

§ 18–13.402–1 General requirements for separate facilities contracts.

Industrial facilities shall be provided only under a NASA facilities contract separate from any related procurement contract, except that industrial facilities may be provided under suitable clauses in a related procurement contract when:

(a) The cumulative total acquisition cost (actual or estimated) of the industrial facilities provided to a contractor at one plant or general location does not exceed $50,000;

(b) The contract is for the performance of construction work;

(c) The contract is for the performance of work within establishments or installations operated by the Government; or

(d) The contract is for the performance of services, involving the operation of a Government-owned plant or installation, for a period of 6 months or less, and the facilities provided are to be used only in connection with such contract.

§ 18–13.402–2 Acquisition, use, and consolidated facilities contracts.

(a) A facilities acquisition contract is a facilities contract which contains terms and conditions covering Government provision of facilities to a contractor. It covers (1) contractor acquisition, construction, and installation of the facilities described in the contract schedule and (2) NASA furnishing of facilties when work, such as installation work, will be performed by the contractor at direct expense to the Government

under the contract. A facilities acquisition contract does not contain authority for contractor use of facilities. When the facilities under the acquisition contract are acquired, installed, and accepted by the Government, accountability is transferred to a facilities contract governing use.

(b) A facilities use contract is a facilities contract which contains terms and conditions covering the contractor's use of Government-owned facilities for which he is accountable. Facilities, in addition, are furnished to a contractor by the Government under a facilities use contract in the circumstances set forth in § 18–13.403(b).

(c) A consolidated facilities contract is a facilities contract which provides for both acquisition and use of facilities.

§ 18–13.403 Application of acquisition, use, and consolidated facilities contracts.

(a) When a separate facilities contract is required to provide facilities under § 18–13.402–1, the acquisition type of facilities contract, rather than a consolidated facilities contract, shall be used, if there is a preexisting facilities contract covering use of Government-owned facilities by the contractor. If there is no preexisting facilities contract covering use of facilities by the contractor, the acquisition type of facilities contract shall be used in conjunction with a new facilities use contract, except that a consolidated facilities contract may be used if it is anticipated that all foreseeable work with the contractor will continue to remain solely under the cognizance of the NASA installation entering into the facilities contract.

(b) A facilities use contract shall be employed, in preference to employing either a facilities acquisition contract or a consolidated facilities contract, to cover Government furnishing of facilities to a contractor when the contract does not provide direct reimbursement thereunder in connection with the furnishing of such facilities.

(c) Except as otherwise provided by § 18–13.402, all industrial facilities provided to a contractor shall be accountable under a single facilities contract governing use, modified from time to time as necessary, and covering only the facilities at that plant or general location, except that the contracting officer may authorize the temporary use of the facilities at a location other than that covered by the contract. Except for such temporary use and except for facilities for the performance of subcontracts under a construction contract or under contracts for work within establishments or installations operated by the Government, industrial facilities provided to a subcontractor shall be provided, and their use shall be covered, by a separate contract or lease between the Government and the subcontractor.

(d) When a single facilities contract has been entered into under this § 18–13.403, no additional facilities shall be provided a contractor at the plant or general location unless (1) prior written advice regarding the proposed increase in the facilities assistance is furnished to the contracting officer of the single facilities contract, and (2) the contract instrument covering the additional facilities provides for transfer of such facilities to the use provisions of the single facilities contract.

(e) The original and 5 copies (3 executed and 2 conformed) of each proposed facilities contract or modification thereto which provides facilities having a total acquisition value exceeding $50,000, or provides real property regardless of amount, shall be forwarded to the Office of Procurement (Code KDR) for review and approval prior to award. Such contract or modification shall contain the approval provision set forth in § 18–7.104–51. One copy of all other contracts or modifications thereto which provide facilities to a contractor shall be forwarded promptly upon execution to the Office of Procurement (Code KDF).

§ 18–13.405 Title.

Each facilities contract shall provide that title to all industrial facilities furnished to the contractor will remain in the Government and that title to industrial facilities acquired by a contractor, the cost of which is reimbursable to the contractor, shall vest in the Government at the earliest practicable time.

§ 18–13.406 Nonseverable industrial facilities.

Nonseverable industrial facilities shall be located on land owned or controlled by the Government, unless the Director (or other head) of a NASA installation determines that such location is not feasible. The determination to locate nonseverable industrial facilities on land not owned or controlled by the Government shall be made only when all of the conditions in paragraphs (a) through (d) of this section have been met:

(a) Consideration has been given to any nonrecoverable costs involved, including transportation and installation;

(b) Consideration has been given to locating the facilities on a portion of the land where the facilities can be segregated from existing contractor-owned and Government-owned nonseverable facilities and where the new facilities are readily accessible to public thoroughfares, where it is practical to do so, and in such cases consideration has been given to obtaining a written agreement by the contractor on whose land the facilities are to be placed that either the Government or another Government contractor will have the right to operate the facilities upon termination or completion of the work for which the facilities were acquired; and in cases where such an agreement is not obtained, the negotiation effort shall be documented to justify the alternate proposal;

(c) The contractor agrees that the Government will have the right to abandon in place all nonseverable industrial facilities furnished under the contract located on land not owned or controlled by the Government, and that the Government in such event will not be subject to any obligation to restore or rehabilitate the premises on which the facilities are located unless otherwise provided in the contract with the prior approval of the Director (or other head) of a NASA installation (this appoval authority shall not be delegated); and

(d) One of the circumstances in subparagraphs (1) through (4) of this paragraph has been met—

(1) The facilities are disposable, after the Government's need therefor has ceased, to parties other than the contractor for commercial or industrial operations. Such right of disposition must be unencumbered and will be evidenced by written agreement or other legal instrument signed by the contractor;

(2) The contractor agrees, in writing, that he will purchase the facilities upon the expiration of the facilities contract, or at any time prior thereto, at a price equal to the acquisition cost of the facilities less depreciation at the rate or rates specified in the contract (which rate or rates shall take into consideration the estimated useful life of the facilities), or credit an amount equal to such price against any amounts due the contractor under the contract;

(3) The estimated useful life of the facilities will not extend beyond the expiration of the facilities contract or the completion of the work for which facilities were provided; or

(4) The Administrator, NASA, specifically approves other provisions which he considers adequate to protect the interests of the Government in the facilities.

§ 18–13.407 Right of contractor to use.

(a)(1) Each facilities contract which provides for use of facilities shall limit the right of the contractor to use the industrial facilities to the performance of the contracts and subcontracts specified or otherwise identified in the facilities contract, added thereto by modifications, or approved in writing by the contracting officer cognizant of the facilities contract. In the latter event, a record of approved contracts and subcontracts shall be included in the facilities contract file. Where a facilities contract authorizes the use of industrial facilities in the performance of contracts entered into by formal advertising, the facilities contract shall specify a cash rental to be paid in such cases. Facilities contracts may authorize the use of industrial facilities without charge in the performance of contracts other than those entered into by formal advertising if:

(i) The user is not thereby placed in a favored competitive position; and

(ii) The Government receives adequate consideration through reduced cost for supplies or services or otherwise (see § 18–13.601). Such reduced cost may be established in the initial negotiation of new contracts, or by the readjustment of prices (including fixed fees and allowable costs) of existing contracts, or by price redetermination in the case of negotiated fixed-price contracts where the saving to the contractor cannot be accurately forecast.

(2) Where a facilities contract authorizes the use of industrial facilities without charge to perform subcontracts, it is likewise important to assure that the waiver of a use charge is consistent with the requirements that:

(i) The subcontractor is not thereby placed in a favored competitive position; and

(ii) The Government receives adequate consideration through reduced cost for the supplies or services or otherwise (see § 18–13.601).

Therefore, the use of industrial facilities without charge to perform a particular subcontract shall not be authorized unless the contracting officer determines that these requirements are met.

(3) In order to ensure that a concern possessing Government facilities on a no-charge basis is not thereby placed in a favored position in competing for Government business, either as a prime contractor or a subcontractor, with relation to other concerns possessing either a lesser amount of Government facilities or possessing their own facilities, a suitable method for eliminating any competitive pricing advantage shall be employed. This may be accomplished:

(i) By charging a rental in the manner prescribed in § 18–13.601;

(ii) In the price evaluation of competitive proposals, by adding to the proposed contract price of a concern possessing Government facilities without charge an evaluation factor consisting of an amount estimated to equal such rental charge; or

(iii) By any other method or technique which will give effect to the basic policy set forth in this paragraph.

It is recognized that there may be situations in which there is no need for charging rental or applying equalization factors to assure that the user possessing Government facilities is not thereby placed in a favored competitive position, for example, where all competing concerns possess substantially the same amout of Government facilities on a no-charge basis which may be used in the performance of a proposed contract; where the procurement is to be made from a sole source; or where the award is to be made on a basis in which the rental cost of Government-owned facilities is not a controlling factor. The contract file shall be documented to show the method employed to eliminate competitive advantage in making award.

(b) When a contractor is not authorized to use the facilities on a no-charge basis by paragraph (a) of this section, because of the competitive aspects, or because of administrative difficulties, or other considerations, the contract shall require the contractor to pay a fair and reasonable use charge. Such fair and reasonable use charge shall be established on the basis of sound commercial practice, including any prevailing commercial rates, and shall be such as to prevent the contractor from obtaining an unfair competitive advantage by reason thereof. The use charge for production equipment and for other personal property and equipment constituting industrial facilities will conform to the rates prescribed in § 18–13.601.

(c) A contractor may be authorized by the contracting officer in writing to make incidental use of all or part of the facilities covered by the facilities contract for work other than for NASA. Prior approval of the Office of Emergency Planning must be obtained through the Director of Procurement before authorizing over 25 percent non-Defense use of Government-owned machine tools (Production Equipment Code Nos. 3411–341999 and 3441–34490) having a unit acquisition cost of $500 or more. (The term non-Defense use means work on other than DOD, AEC, or NASA contracts and subcontracts.) Where a facilities contract is no longer required in connection with the performance of a Government contract or contracts, it shall not be continued solely for the purpose of authorizing commercial use of all or any part of the facilities covered by the facilities contract. The rental rates applicable to Government facilities as provided in § 18–13.601 shall apply to facilities under a facilities contract for the period that such facilities are authorized for use for commercial purposes.

§ 18–13.408 Maintenance.

(a) Pursuant to the Maintenance clause required in each facilities use contract and each consolidated facilities contract by §§ 18–7.703–27 and 18–7.704–48, the contractor shall perform normal maintenance of the facilities in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the facilities and, with respect to equipment, normal parts replacement. The contractor shall submit to the contracting officer or his designated representative a proposed maintenance program in sufficient detail to show its adequacy as a normal maintenance program. However, on direction or approval by the contracting officer, the following may be authorized:

(1) A specified degree of protection, preservation, maintenance, and repair that is less than sound industrial practice as to any part of the facilities which is determined by the contracting officer to be nonessential to future utilization of the facilities as a whole;

(2) Reimbursement by the Government for the cost of protecting, maintaining, preserving, and repairing facilities not authorized for use by the Government; and

(3) Reimbursement by the Government for maintenance work in excess of normal maintenance when such work is in the Government's best interest.

(b) The contracting officer shall order a decrease in maintenance requirements when current normal maintenance is in excess of that required in the Government's interest and sound industrial practices.

(c) A facilities contract shall contain no warranty, expressed or implied, regarding the condition of fitness for use of any item of Government facilities. Nothing in this § 18–13.408 shall limit the contractor's rights with respect to costs properly allocable under other contracts.

§ 18–13.409 Identification and records.

Each facilities contract which governs use of industrial facilities shall require the contractor, without cost to the Government thereunder, to maintain adequate property control records and a system of identification of such industrial facilities in accordance with the provisions of the "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors," Appendix C, ASPR, and the NASA Industrial Property Control Manual (NPC 105) in effect on the date of the contract.

§ 18–13.410 Late delivery, diversion, and substitution.

Each contract under which industrial facilities are furnished shall provide that:

(a) The Government will not be liable to the contractor for breach of contract by reason of nondelivery or of any delay in the delivery of industrial facilities to be provided by the Government. Provisions for appropriate equitable adjustment should be made in related procurement contracts which may be affected by any such nondelivery or delay.

(b) The Government will have the right, when it is determined to be in the best interest of the Government, to direct—

(1) delivery of any industrial facility or facilities acquired by or furnished to the contractor under the contract to locations other than those specified in the contract; and

(2) assignment, to the Government or to third parties, of purchase orders or subcontracts of the contractors for any industrial facility or facilities covered by the contract.

Provisions for appropriate equitable adjustment should be made in related procurement contracts which may be affected by such modifications.

(c) The Government shall have the right to furnish any of the industrial facilities, in lieu of acquisition thereof by the contractor. Where facilities are acquired by the contractor, provisions will be made for reimbursement of proper cost incurred by him, including the cost of terminating purchase orders or subcontracts therefor.

§ 18–13.411 Risk of loss or damage and liability.

Each contract which includes industrial facilities:

(a) shall provide that the contractor will not be liable for any loss or damage to the industrial facilities, or for expenses incidental to such loss or damage, except that the contractor shall be responsible for any such loss or damage (including expenses incidental thereto)—

(1) which results from a risk expressly required to be insured under the facilities contract, but only to the extent of the insurance so required to be procured

and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;

(2) which results from a risk which is in fact covered by insurance or for which the contractor is otherwise reimbursed, but only to the extent of said insurance or reimbursement;

(3) which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the contractor's business, (ii) all or substantially all of the contractor's operations at the industrial facility if such facility is a complete plant or unit, (iii) all or substantially all of the contractor's operations at any one plant or separate location in which such industrial facilities are installed or located, or (iv) any separate or complete major industrial operation in connection with which the facilities are used; or

(4) which results from a failure on the part of any of the contractor's directors, officers, or other representatives mentioned in subparagraph (3) of this paragraph (i) to maintain and administer, in accordance with the contractor's approved maintenance procedures, a program for the maintenance, repair, protection, and preservation of the industrial facilities, to assure their full availability and usefulness at all times, or (ii) to take all reasonable steps to comply with any appropriate written directions or instructions which the contracting officer may prescribe as reasonably necessary for the protection of the industrial facilities; *Provided,* That, with respect to any such loss or damage caused by an excepted peril, the contractor shall be liable under subparagraph (4) of this paragraph only where such failure of the contractor's representative, as described herein, results from his willful misconduct or lack of good faith. (As used herein, the term "excepted peril" shall mean any peril set forth in § 18–13.502–2(f)(1) and also may include additional provisions for liability in specific cases, in which case such additional provisions shall be included, or specifically referred to, in the general liability clause.)

(b) Shall require the contractor to hold the Government harmless against claims for injury to persons or damage to property of the contractor or others arising from the contractor's possession or use of the industrial facilities: *Provided, however,* That as long as there is in effect one or more contracts for supplies or services which require the use of such facilities, the provisions of such contracts shall govern the assumption of liability for such claims arising out of or related to the performance of each such contract and involving the possession or use of Government-provided industrial facilities;

(c) Shall require the contractor to carry insurance in accordance with Subpart 18–10.6. Where justified by the circumstances of any particular contract, NASA may require the contractor to assume greater risks than those enumerated in subparagraph (a) of this section.

§ 18–13.412 Unusable or unneeded facilities.

Each facilities contract which governs use of facilities shall provide that the contractor shall notify the contracting officer in writing whenever a substantial part of the facilities is no longer needed or usable for the purpose of performing Government contracts or subcontracts.

§ 18–13.413 Termination of facilities contracts.

§ 18–13.413–1 Termination by the Government.

(a) Facilities contracts shall provide that the Government shall have the right, upon notice, to terminate such contracts with respect to all or any part of the facilities covered thereby, or to terminate or limit the contractor's right to use any or all of such facilities. Provisions for equitable adjustment should be made in related procurement contracts which may be affected by such termination or limitation of right to use.

(b) Facilities contracts governing use of facilities shall be limited in duration to 5 years. Thereafter, if continued use of the facilities by the contractor is mutually desired, the parties shall enter into a new contract incorporating such provisions as may be required by applicable laws and regulations. However, the parties by written agreement may extend the use of the facilities under the facilities contract beyond the 5-year period to permit the completion of then existing procurement contracts and subcontracts. The contractor shall not be granted the unilateral right to extend the time during which the contractor is entitled to use the facilities provided under the contract.

§ 18–13.413–2 Termination by contractor.

(a) Facilities contracts governing use of facilities shall provide that the contractor shall have the right to terminate his authority to use the facilities at any time, upon written notice.

(b) Termination at the option of the contractor shall not relieve the contractor of his obligations or liabilities under any related procurement contract affected thereby.

§ 18–13.414 Standby provisions.

Upon approval of the Director of Procurement, facilities contracts may include appropriate provisions for maintenance or storage of the industrial facilities, or other suitable standby provisions, upon completion or termination, in whole or in part, of such contract or of the contractor's right to use any or all of the facilities covered thereby.

§ 18–13.415 Disposition.

Except as to those nonseverable industrial facilities for which specific provision is made in § 18–13.406, the disposition of industrial facilities shall be in accordance with Part 18–8 of this chapter and NASA Management Instruction 20–4–2. Each facilities contract covering use of facilities shall provide that within the period specified in the contract following the effective date of partial or complete termination, the contractor will account for all facilities with respect to which the contract is terminated. Within 180 days after the contractor accounts for the facilities, the contracting officer will notify the contractor as to disposition thereof. The contractor will be required to prepare, protect, remove, or ship the facilities as directed by the contracting officer. Provision may be made for equitable reimbursement to the contractor for expenses so incurred. If the contracting officer fails to notify the contractor as to disposition of the facilities within the 180-day period, herein provided, the contractor may, upon reasonable notice to the Government, remove and store elsewhere at Government risk and expense those facilities located within the plant of the contractor. (See § 18–8.101(b).)

§ 18–13.416 Facilities contract clauses.

Clauses for facilities acquisition use, and consolidated facilities contracts are set forth in Subpart 18–7.7.

Subpart 18–13.5—Contract Clauses

§ 18–13.500 Scope of subpart.

This Subpart 18–13.5 sets forth uniform contract clauses relating to Government property provided for use in connection with the performance of contracts for supplies or services.

§ 18–13.501 Applicability.

(a) As used in this Subpart 18–13.5, the term "fixed-price contract for supplies or services" shall mean any contract entered into:

(1) Either by formal advertising or by negotiation, but excluding purchase orders for $5,000 or less, letter contracts, notices of award, and modifications to contracts or purchase orders;

(2) At a fixed price (with or without provisions for price adjustment); and

(3) For supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

(b) As used in this Subpart 18–13.5, the term "cost-reimbursement type contract for supplies or services" shall mean any contract (other than a letter contract, notice of award, or modification of a contract) entered into by negotiation on a cost or cost-plus-a-fixed-fee basis for supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

§ 18–13.502 Government - furnished property clause for fixed-price supply contracts.

Either the clause set forth in § 18–13.502–1 or in § 18–13.502–2 shall be used in fixed-price contracts for supplies or services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which NASA is to fur-

nish to the contractor materials, special tooling, or industrial facilities.

§ 18–13.502–1 Short form clause.

Where the total cost of the contract is less than $25,000, and where, in the judgment of the contracting officer, the risk of loss or damage to such property would not result in the inclusion of contingency charges in the contractor's price, a short form clause shall be included in the contract, as follows:

GOVERNMENT-FURNISHED PROPERTY
(SHORT FORM) (OCT. 1960)

(a) The Government shall deliver to the Contractor at the specified time or times the property described in the Schedule or specifications, together with such related data and information as the Contractor may reasonably request. In the event the Government fails to make timely delivery of such Government-furnished property, and upon timely written request of the Contractor, the Government shall make an equitable adjustment of delivery or performance dates or contract price, or both, pursuant to the "Changes" clause of this contract.

(b) By notice in writing, the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer, upon the written request of the Contractor, shall equitably adjust the delivery or performance dates or the contract price, or both, pursuant to the "Changes" clause of this contract.

(c) Title to all property furnished by the Government, hereinafter referred to as "Government-furnished" property, shall remain in the Government. Title to Government-furnished property shall be unaffected by the incorporation or attachment thereof to any property not owned by the Government, nor shall Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason or affixation to any realty. Except as otherwise specifically provided in this contract, the Contractor (i) shall not pledge, assign, or transfer title to any Government-furnished property, nor do or suffer anything to be done whereby any Government-furnished property may be seized, taken in execution, attached, destroyed, or injured, and (ii) shall not remove or otherwise part with possession of, or permit the use by others of, any Government-furnished property.

(d) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract. In lieu of payment of damages to the Government, the Contractor, if so instructed by the Contracting Officer, shall accomplish, at his own expense, the repair or replacement of Government-furnished property for the loss or damage of which the Contractor is responsible.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government-furnished property.

(f) Government-furnished property shall, unless otherwise provided herein, be used only for the performance of this contract.

§ 18–13.502–2 Long form clause.

In all other cases where Government-furnished property is involved, the following long form clause shall be used:

GOVERNMENT-FURNISHED PROPERTY
(LONG FORM) (OCTOBER 1963)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or loss its identity as personalty by reason of affixation to any realty. The Contractor shall comply with the provisions of the NASA Industrial Property Control Manual (NPC–105) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

The following provision (f) is for use in advertised fixed-price contracts:

(f) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

The following provision (f) is for use in negotiated fixed-price contracts except those contracts involving Government-furnished Property relating to labor surplus area or small business set-asides for which the provision (f) for advertised contracts shall be used:

(f) (1) Except for loss, destruction, or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection, and preservation of the Government-furnished Property, as required by paragraph (e) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished Property—

(i) caused by any peril while the property is in transit off the Contractor's premises or

(ii) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils—

(A) fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air

forces; or by an agent of any such government, power, authority, or forces; or

(B) other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished Property while in his possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government-furnished Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserve) covering loss or destruction of or damage to the Government-furnished Property caused by any excepted peril.

(3) Upon the happening of loss or destruction of or damage to any Government-furnished Property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government-furnished Property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government-furnished Property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, caused by an excepted peril, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-furnished Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-furnished Property for the benefit of the Government.

*(7) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

§ 18–13.503 Government property clause for cost-reimbursement type contracts.

The following clause shall be used in cost-reimbursement type contracts for supplies and services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) when NASA is to furnish to the contractor, or the contractor is to acquire for the account of the Government, material, special tooling, or industrial facilities.

GOVERNMENT PROPERTY (OCTOBER 1963)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this

*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.

contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall comply with the provisions of the NASA Industrial Property Control Manual (NPC–105) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (1) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) all or substantially all of the Contractor's business; or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract;

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection, and preservation of Government Property as required by paragraph (e) hereof; or

(B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof;

(iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) which results from a risk expressly required to be insured under this contract but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in his possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) the lost, destroyed, and damaged Government Property,

(ii) the time and origin of the loss, destruction, or damage,

(iii) all known interests in commingled property of which the Government Property is a part, and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government Property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, he shall use the proceeds to repair, renovate, or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

*(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property: *Provided, however*, That the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

As provided in paragraph (i) of the above clause, the contracting officer may authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from the Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery

*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Flight Risks clause is omitted.

through a reduction of overhead or other cost factor affecting reimbursement under the contract.

§ 18–13.504 Special tooling clause for fixed-price contracts.

The following clause shall be used in fixed-price contracts for supplies or services for the performance of which the contractor furnishes special tooling, under the conditions set forth in § 18–13.302(b), but is not for use in contracts in which special tooling is called for as a separate end item in the Schedule (see § 18–13.302(a)).

SPECIAL TOOLING (APRIL 1962)

(a) The term "special tooling," as used in this clause, means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the Contractor for use in the performance of this contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include (i) items of tooling or equipment heretofore acquired by the Contractor, or replacements thereof, whether or not altered or adapted for use in the performance of this contract; (ii) consumable small tools; or (iii) general or special machine tools, or similar capital items.

(b) The Contractor agrees not to use any items of special tooling except in the performance of this contract, or except as otherwise provided by this clause, without prior written approval of the Contracting Officer. The Contractor may, with the approval of the Contracting Officer, use the special tooling in the performance of other contracts with the Government, or subcontracts under Government contracts: *Provided*, That the Contractor agrees not to include in the price or prices for any such contracts or subcontracts, involving the use of such special tooling, the cost of such tooling or any allowance or charge to cover depreciation or amortization which has previously been charged against this contract.

(c) Within 60 days after delivery of the first-production end items under this contract, or such later date as may be prescribed by the Contracting Officer, the Contractor shall, if the Contracting Officer so requests, furnish the Contracting Officer a list of all special tooling acquired or manufactured by the Contractor for use in the performance of this contract. The list shall specify the nomenclature, tool number and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph: *Provided, however*, That the Contracting Officer may by written notice waive this requirement or extend it until the completion of this contract and other contracts and subcontracts as to which approval has been obtained under paragraph (b) above. Special tooling which has become obsolete as a result of changes in design or specifications need not be reported, except as provided for in paragraph (d).

(d) In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part, and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).

(e) At the time he furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which he desires to retain, together with a written offer (i) to retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items (which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by him); or (ii) to retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) Within 90 days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor (i) a list specifying the particular products, parts or services for which the Government may require special tooling, together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased; or (ii) an acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto; or (iii) subject to the provisions of paragraph (j) hereof, a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list; or (iv) a statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or (v) any combination of the foregoing, as the circumstances warrant. The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall, subject to the provisions of paragraph (j) hereof, (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government, as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph.

(g) If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the Contracting Officer may direct.

(h) The Contractor agrees that he will follow his normal industrial practice in maintaining property control records on all the special tooling, and that he will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, he will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.

(i) The Contractor agrees that between the date any usable items of special tooling are no longer needed by him, within the meaning of this clause, and the date of final disposition of such items under this clause, he will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f)(iv). The Contractor shall not be required to keep any such items in place.

(j) Any preparation of items for shipment required of the Contractor under paragraph (f) of this clause, or any disposal as scrap under paragraph (f)(iii), or any action required of the Contractor under paragraph (i), shall be taken pursuant to written instructions of the Contracting Officer, which shall (i) provide for an equitable adjustment of the contract price to cover any additional cost to the Contractor, not taken into account in the negotiation of this contract, of complying with such instructions, which adjustment shall be made in accordance with the procedure set forth in the clause of this contract entitled "Changes," or (ii) otherwise provide for payment to the Contractor of any such additional cost. Any failure of the Contracting Officer to issue the Contractor specific disposition instructions shall be construed as an instruction to the Contractor to take the action required under paragraph (i) with provision for equitable adjustment or payment as provided for above.

The following paragraph relating to subcontracts shall be used in cases where the Contracting Officer deems the use of such paragraph to be necessary in order to protect the Government's interest in special tooling which may be acquired under such subcontracts:

(k) The Contractor agrees, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, and agrees that he will exercise such rights for the benefit of the Government, as the Contracting Officer may direct. (April 1962)

In appropriate cases, the following alternative provision relating to subcontracts be used:

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will to the extent consistent with his normal business practice include appropriate provisions therein to obtain rights comparable to those granted to the Government by this clause, and agrees that he will exercise such rights for the benefit of the Government, as

the Contracting Officer may direct. (April 1962)

§ 18–13.505 Government-furnished property clauses for fixed-price type research and development contracts with nonprofit institutions.

Where property is furnished by the Government to a nonprofit institution under a fixed-price research and development contract (provided that the contract is executed on a nonprofit basis), one of the clauses set forth in § 18–13.505–1 or § 18–13.505–2 shall be used.

§ 18–13.505–1 Short form clause.

When the total cost of the contract is less than $25,000, the following short form clause shall be included in the contract:

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APRIL 1962)

The Government agrees to furnish to the Contractor such research equipment as is set forth in the Schedule. Upon final payment, the Contractor agrees to transfer to the Government, without charge, any items of equipment listed in the Schedule which the Contracting Officer may request to be transferred in accordance with instructions issued at that time. The packing, crating, and shipping charges incident to delivery to the Government will be borne by the Government.

§ 18–13.505–2 Long form clause.

In all other fixed-price research and development contracts of $25,000 and over with nonprofit institutions where Government-furnished property is involved, the following long form clause shall be included in the contract:

GOVERNMENT-FURNISHED PROPERTY (LONG FORM) (APRIL 1962)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the delay. In the event that Government-furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the return, disposition, repair, or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under ths contract. In any such case, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease.

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

In accordance with § 18–13.803, the following alternate paragraph (c) may be used:

(c) Title to Government-furnished Property shall remain in the Government, except for that equipment the title to which is transferred to the Contractor pursuant to this paragraph. The Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government-furnished Property. Title to Government-furnished Property, not otherwise transferred to the Contractor, shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. (April 1962)

(d) The Government-furnished Property shall, unless otherwise provided herein, and except as may be otherwise approved by the Contracting Officer, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however*, That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(f) The provisions of Part III, Appendix C, Armed Services Procurement Regulation, "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors," as in effect on the date of this contract, are hereby incorporated by reference and made a part of the contract, insofar as they relate to Government-furnished Property. The Contractor agrees to comply with the provisions thereof relating to the keeping of property control records, identification and marking, segregation and commingling, taking of inventories, and control of salvage and scrap, and the Contractor also accepts the responsibilities set forth in said Part III with respect to Government-furnished Property.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of his property records under this contract, and access to any premises where any of the Government-furnished Property is located.

(h)(1) The Contractor shall not be liable for any loss of or damage to the Government-furnished Property, or for expenses incidental to such loss or damage, except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (1) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government-furnished Property as required by subparagraph (e) above; or

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished Property, except to the extent that the risk of loss is imposed on the Contractor under (1)(iii) above, or insurance has been required under (1)(iv) above.

(3) Upon the happening of loss or destruction of or damage to any Government-fur-

nished Property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government-furnished Property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interest in commingled property of which the Government-furnished Property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, as its option, assumed directly) to the extent approved by the Contracting Officer and set forth in a modification to this contract.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this Contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(7) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable in the case of loss or destruction of, or damage to, aircraft.

(i) Upon completion or expiration of this contract, any Government Property which has not been consumed in the performance of this contract, or which has not been disposed of as hereinafter provided in subparagraph (i) of this article, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in subparagraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-furnished Property, or if the Contractor determines any Government-furnished Property to be in excess of his needs under this contract, such Government-furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-furnished Property under this subparagraph (j) or subparagraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and any property damage occasioned thereby.

*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.

§ 18–13.506 Government property clauses for cost-reimbursement type research and development contracts with nonprofit institutions.

Where property is furnished by the Government to, or is acquired by a nonprofit institution, under a cost-reimbursement type research and development contract (provided that the contract is executed on a nonprofit basis), one of the clauses set forth in § 18–13.506–1 or § 18–13.506–2 shall be used.

§ 18–13.506–1 Short form clause.

When the total cost of the contract is less than $25,000, the clause set forth below shall be included in the contract:

GOVERNMENT PROPERTY (SHORT FORM) (APRIL 1962)

All property furnished to or purchased by the Contractor in connection with work under this contract shall be and remain the property of the Contractor, except as provided below, even though the Contractor is entitled to be reimbursed for the cost of the property as a direct item of cost under this contract. If the Contractor acquires individual items of equipment exceeding $1,000 in value for any single item, the Contractor shall report such items to the Contracting Officer from time to time as they are procured and maintain a control system which will permit their ready identification and location. Upon final payment, the Contractor agrees to transfer to the Government, without charge, any items of equipment furnished to the Contractor or required to be reported hereunder, which the Contracting Officer may request to be transferred in accordance with instructions issued at that time. The packing, crating, and shipping charges incident to delivery to the Government will be borne by the Government.

§ 18–13.506–2 Long form clause.

In all other cost-reimbursement type research and development contracts of $25,000 or over with nonprofit institutions where Government property is involved, the clause set forth below shall be included in the contract.

GOVERNMENT PROPERTY (LONG FORM) (APRIL 1962)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule of this contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provisions affected by such delay. In the event that the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provision affected by the return, disposition, repair, or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) The Government may deliver to the Contractor Government-furnished Property in addition to that set forth in this contract. Upon such delivery this contract may be amended, if appropriate, to accomplish an equitable adjustment in its terms and provisions.

(c)(1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, except for that covered by (c)(2) below, for the cost of which the contractor is to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing

or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

(c)(2) All research equipment purchased by the Contractor in connection with work under this contract shall be and remain the property of the Contractor, even though the Contractor is entitled to be reimbursed for the cost of the research equipment as a direct item of cost under this contract. If the Contractor acquires individual items of research equipment exceeding $3,000 in value for any single item, the Contractor shall report such items to the Contracting Officer from time to time as they are procured and maintain a control system which will permit their ready identification and location. Upon final payment, the Contractor agrees to transfer to the Government, without charge, any item of research equipment required to be reported hereunder which the Contracting Officer may request be transferred in accordance with instructions issued at that time. The packing, crating, and shipping charges incident to delivery to the Government will be borne by the Government.

In accordance with § 18–13.803, the following additional language may be added to paragraph (c)(1) of the clause:

Notwithstanding the provisions of this paragraph (c)(1) relative to title, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property. (APRIL, 1962)

(d) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(e) The Government property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein and except as may be otherwise approved by the Contracting Officer, be used only for the performance of this contract.

(f) The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government property.

(g) The provisions of Part III, Appendix C, Armed Services Procurement Regulation, "Manual for Control of Government Property in Possession of Nonprofit Research and Development Contractors," as in effect on the date of this contract, are herein incorporated by reference and made a part of this contract. The Contractor agrees to comply with the provisions thereof relating to the keeping of property control records, identification and marking, segregation and commingling, taking of inventories, and control of salvage and scrap, and the Contractor also accepts the responsibilities set forth in said Part III with respect to Government property.

(h) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of his property records under this contract, and access to any premises where any of the Government property is located.

(i)(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in (i) above—

(A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (f) above or

(B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under (f) above;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided*, That if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(j) The Government property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government property. In any such instance, this contract may be amended to accomplish an equitable adjustment in its terms and provisions.

(k) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as hereinafter provided in subparagraph (1) of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in subparagraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the cost of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(l) If the Contracting Officer determines that the interests of the Government require removal of any Government property, or if the Contractor determines any Government

*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.

property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by subparagraph (k) above. In the event that the Contracting Officer requires the removal of any Government property under this subparagraph (l) or subparagraph (k) above, the direct cost to the Contractor of such removal and of any property damage occasioned thereby shall constitute an allowable cost thereunder.

(m) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the removal of any Government property.

(n) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

Subpart 18–13.6—Use of Government-Owned Industrial Facilities on Work Other Than for NASA

§ 18–13.600 Scope of subpart.

Subparts 18–13.1 through 18–13.5 are intended to be applicable only to those situations in which Government property is provided to contractors or subcontractors of any tier for use in connection with procurement by NASA. This Subpart 18–13.6 relates to making available to contractors, or former contractors, or to other parties, Government-owned industrial facilities under the control of NASA for use solely or principally on work other than for NASA. (As to making industrial facilities available principally for use in connection with procurement by NASA and incidentally for use on work other than for NASA, see § 18–13.407.) The question of making industrial facilities available for use on work other than for NASA may arise with respect to such property in the possession of the Government (e.g., machine tools in reserve storage) or in the possession of the potential user (e.g., where a contractor has completed the contract under which the property was originally provided). Basic authority to permit the use of Government property on work other than for NASA is found in statutes authorizing NASA to lease property under its control (see 42 U.S.C. 2473 (b) (3)).

§ 18–13.601 Rental.

§ 18–13.601–1 General.

When industrial facilities are made available for use on work other than for NASA, the user shall be charged a fair and reasonable rental: *Provided*, That under NASA procedures consistent with § 18–13.407(a), rental may be waived with regard to such property furnished solely for use in performing work for other Government agencies. Such rental unless otherwise specified herein shall be established on the basis of sound commercial practice, including any prevailing commercial rates. Except as otherwise provided in § 18–13.601–2, such rental may, where permitted by the law under which the contract or agreement is executed, take into consideration obligations assumed by the user to protect and maintain the property as well as to perform other services as all or part of the consideration for the contract or agreement. The rental shall, in any event, be such as to prevent the user from obtaining an unfair competitive advantage by reason thereof over competitors who own their facilities or obtain them from private sources. The rental shall be charged on the basis of the time during which the property is available for use rather than on the basis of the time during which the property is actually used, except in the case of facilities, other than those covered by § 18–13.601–2, where it is determined by the Director of Procurement to be impracticable or contrary to the best interest of the Government. The Government shall make no warranty, express or implied, regarding the condition or fitness for use of any item of property.

§ 18–13.601–2 Rental rates.

Except as authorized by the Director of Procurement, rentals charged for industrial facilities shall conform to the following rates:

(a) As to production equipment of the types listed in § 18–13.603, rent shall be at the appropriate rate set forth below regardless of the extent and value of any obligations undertaken by the user to provide maintenance or other services.

Age of equipment	*Monthly rental rate*
0 to 2 years	1¾ percent of acquisition cost.
Over 2 to 6 years	1½ percent of acquisition cost.
Over 6 to 10 years	1 percent of acquisition cost.
Over 10 years	¾ percent of acquisition cost.

The acquisition cost to be used in determining rental shall be the purchase price of the equipment charged the Government plus costs of transportation to, and installation in, the place where the equipment will be used under the contract or agreement if such costs are borne by the Government. Transportation and installation costs may be estimated by the contracting officer where the actual costs are not known. When special tooling or accessories are rented with the equipment, equipment acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When equipment is modernized by substantial rebuilding at Government expense so as to enhance the original capability of the tool, the acquisition cost of the equipment shall be adjusted upward to take into account the increased value that such rebuilding and modernization represents. If the purchase price is not available or cannot be obtained from the manufacturer of the equipment, the installation concerned shall obtain an estimated purchase price from the Office of Procurement (Code KDF). On January 1 following the date of manufacture of each item of equipment, such item shall be considered one year old, and on each succeeding January 1 it shall become one year older; and contracts or agreements shall so provide. For example, if an item of equipment is manufactured on July 15, 1958, it will be considered to be one year old on January 1, 1959, two years old on January 1, 1960, three years old on January 1, 1961, etc. The item of equipment will be considered "over two years old" on and after January 1, 1960, "over six years old" on and after January 1, 1964, and "over ten years old" on and after January 1, 1968.

(b) Rent at the rate of not less than 1 percent per month of the original acquisition cost of such property or equipment shall be charged for property and equipment constituting industrial facilities other than production equipment covered in (i) above, and for equipment for which there are no prevailing commercial rates.

(c) Charges to be made under the provisions of paragraphs (a) and (b) of this section shall be computed as follows—

(1) For any period in which use of personal property and equipment constituting industrial facilities is authorized, the contractor, regardless of the character and extent of his use of the facilities, shall be charged a full month's rental for each month or fraction thereof, computed in accordance with the above rates, reduced by the amount of rental which would be properly allocable to Government contracts and subcontracts on which use of the facilities without charge has been authorized. The portion of the rental charge properly allocable to such Government contracts and subcontracts may be determined either prospectively or retroactively, as provided in the facilities contract, and shall be computed by multiplying the full rental for the period by a fraction whose numerator is the amount of use of the facilities by the contractor on a no-charge basis and whose denominator is the total amount of use of the facilities on both a rental and no-charge basis.

(2) For the purpose of the above formula, amounts of use may be determined on the basis of direct labor hours, sales, hours of use, or any other method which the contracting officer determines will result in an equitable apportionment of the rental charge.

(d) As to real property constituting industrial facilities, a fair and reasonable rent shall be charged.

Except to the extent otherwise permitted by NASA procedures in the case of property covered by paragraph (b) of this section, the contract or agreement under which property covered by this § 18–13.601–2 is made available shall require the user to protect, preserve, maintain, and repair the property in accordance with sound industrial practice without cost to the Government under such contract or agreement.

§ 18–13.603 Production equipment.

The production equipment to which the provisions of § 18–13.601–2(a) shall be applicable are:

Production equipment code number	*Description*
3411–341999	Machine tools.
3441–34490	Secondary metal forming and cutting machines.
34510–34519	Electric arc welding machines.
34520–3452129 345220–34529	Electric resistance welding machines.
345330–345339	Gas (flame) cutting machines—excluding hand torches.
357211–357219	Metal heat treating furnaces—box type.
357221–3572249	Metal heat treating furnaces—bath type.
357231–357239	Metal heat treating furnaces—basket type.
357241–3572439	Metal heat treating furnaces—bell type.
357261–357269	Metal heat treating furnaces—pit type.
357271–357279	Metal heat treating furnaces—pot type.
3572841–3572849	Induction heating devices.
54160000	Transformers, power, uninstalled, 501 Kva and above, 50 and 60 cycle only.
5561–556159	Powered trucks, industrial.
5563–5563994	Tractors, industrial.
5564–556420162	Trailers for industrial tractors.
563908	Profilometers.
563914	Magnetic particle inspection machines.
5651–56519	Hardness testing machines.
5653–56539	Pressure testing machines.
5656–5656323	Balancing machines.
56572–565729	Gear measuring and treating machines.
56573–565739	Hob, worn and cutter measuring machines.
565742	Surface finish measuring machines.

Subpart 18–13.7—Government-Owned Industrial Facilities and Special Tooling on Work for Foreign Governments

§ 18–13.700 Scope of subpart.

This Subpart 18–13.7 covers use by contractors of Government-owned industrial facilities and special tooling on work for foreign governments.

§ 18–13.701 Use without charge.

Upon request of a foreign government, industrial facilities and special tooling located within the United States, its possessions, or Puerto Rico may be authorized for use, without charge, on contracts of the foreign government or subcontracts thereunder, if:

(a) Such use is approved by the Director of Procurement;

(b) Such use is legally authorized by an agreement with the foreign government;

(c) The foreign government's placing of the contract directly with the contractor is consistent with the best interest of the United States;

(d) Such use will not interfere with foreseeable United States requirements;

(e) Such use does not place the user in a favored competitive position; and

(f) The contractor agrees that no charge for the use of the facilities or tooling will be included in the price charged the foreign government under the contract.

Subpart 18–13.8—Vesting of Title to Equipment in Nonprofit Educational or Research Institutions

§ 18–13.800 Scope.

For vesting of title to equipment in nonprofit institutions or organizations, see Subpart 18–4.51.

Subpart 18–13.50—Utilization of Idle Production Equipment

§ 18–13.5000 Scope of subpart.

This Subpart 18–13.50 establishes the procedures to be followed by NASA installations in acquisition of idle production equipment listed in the Production Equipment Redistribution Inventory (PERI) of the Department of Defense pursuant to the DOD–NASA Letter of Agreement for Utilization of Idle Production Equipment set forth as Attachment A to NASA Management Instruction 2–3–8.

§ 18–13.5002 Procedures.

(a) Prior to submitting a request for an item of production equipment from the Production Equipment Redistribution Inventory, the procurement officer shall determine that:

(1) Suitable equipment is not available at any other NASA installation for loan or transfer as applicable; and

(2) Current excess property listings promulgated by the Department of Defense and the General Services Administration have been screened and the requirement cannot be satisfied therefrom.

(b) Requests for item(s) of idle production equipment shall be forwarded in duplicate to the Office of Procurement (Code KDF) for processing. The request shall contain the following information:

(1) Brief description of the item desired, as well as any alternate items that may be acceptable, including make and model number and applicable Production Equipment Code Number (see Production Equipment Directory, Metal Working Machinery D–1, Volumes 1 and 2, 1960 Edition, available from the Government Printing Office);

(2) Quantity;

(3) Proposed use of the item desired;

(4) Required delivery date;

(5) Statement as to which of the following apply—

(i) The item is required to perform a particular operation only for a short duration, and is not required for continued use for an indefinite period;

(ii) Funds are available to purchase, but the same or equivalent item cannot be obtained from a commercial source within the time required to meet product completion schedule; or

(iii) Funds are not available to purchase.

(6) Funding citation to cover packing, handling, and shipping charges; and

(7) Detailed shipping instructions.

(c) Upon receipt of a request, the Office of Procurement will:

(1) Ascertain the availability of the equipment from the Department of Defense, including condition code, location of the equipment, and pertinent conditions of the loan or transfer;

(2) Advise the installation as to availability;

(3) Arrange for inspection of the item, if desired; and

(4) Prepare the necessary correspondence to effect the loan or transfer from the Department of Defense.

§ 18–13.5003 Transfers from NASA to the military departments.

Requests for NASA idle production equipment received by NASA installations from the military departments through the Production Equipment Reserve Group shall be referred to the Office of Procurement (Code KDF) for appropriate action.

Subpart 18–13.51—Industrial Facilities Expansion Application and Approval

§ 18–13.5100 Scope of subpart.

This Subpart 18–13.51 sets forth the procedures for providing Government-owned industrial facilities (hereinafter referred to in this Subpart 18–13.51 as "facilities"), to contractors and subcontractors for the performance of NASA related procurement contracts for supplies, services, and research and development.

§ 18–13.5101 Consideration of facilities expansion applications.

(a) Facilities expansion will be subject to the policy set forth in § 18–13.102–3 and Subpart 18–13.4 to the extent approved and authorized therein. In determining action or recommendations in regard to the expansion of facilities, the procuring office will be guided by applicable regulations;

(b) It is the continuing obligation of NASA personnel who are: (1) sponsoring the development of NASA programs, (2) selecting sources, or (3) negotiating related procurement contracts, to give due consideration to utilization of existing capacity. Where additional facilities are required, every effort will be made to select those sources that demonstrate a willingness and ability to provide their own facilities. NASA contractors and subcontractors are expected to furnish all facilities unless it is otherwise determined to be in the best interests of the Government. Contractors should be informed of the possible advantages to be gained in providing their own facilities because of depreciation now authorized for Federal income tax purposes. The extent to which NASA contractors

furnish their own facilities will be one of the factors considered in establishing the amount of profit or fee to which the contractors are entitled.

(c) Facilities expansion normally will be initiated pursuant to one of the following conditions:

(1) When Government procurement personnel are unable to locate qualified contractors having or willing to provide the required capacity;

(2) When prime contractors are unable to locate subcontractors having or willing to provide the required capacity; or

(3) After an exhaustive search has failed to disclose a source or supplier having or willing to provide the required capacity.

§ 18–13.5102 Procedure for determining facilities expansion.

The following procedures will be applied in determining the need for facilities expansion, to the extent applicable:

(a) When prime contractors are being selected or requested to submit proposals pursuant to § 18–3.802–3, for each procurement, the contracting officer will require all potential sources to state in writing whether additional facilities will be required, the estimated cost and nature of such facilities, and whether the contractor will furnish the facilities with contractor funds or will request the Government to provide the facilities. The contracting officer will insure that all potential sources are given consideration and that no other suitable source is available requiring fewer Government-provided facilities.

(b) When the selected contractor has stated that additional Government facilities will be required, the contracting officer will advise the contractor to submit a formal application for facilities, furnishing the information indicated in §§ 18–13.5105 and 18–13.5106. The contractor may request assistance in preparing his application for facilities. In order to expedite processing the application, it is important that full and complete justification be given for the required facilities. When the application for facilities is prepared in conjunction with contract proposal for an end-item, 9 copies of the facility application should be forwarded together with the proposal, or as soon as practicable thereafter. Any facilities requirements by subcontractors shall be prepared in accordance with the procedures and provisions of this Subpart 18–13.51 and submitted through the prime contractor to the contracting officer for comments and evaluations. All facilities approved for subcontractors will be provided under separate facilities contracts except as may be provided under § 18–13.5102 (d).

(c) If a facilities project involves construction work, approval of the Associate Administrator must have been obtained by the cognizant NASA Headquarters Program Director prior to the initiation of the procurement action, in accordance with the policies and procedures set forth in NASA Management Instruction 4–1–1.

(d) Facilities provided under a related procurement contract pursuant to § 18–13.401–1 will be controlled by a facilities action control number. Before providing facilities (not in excess of $50,000) under a related procurement contract, the contracting officer must obtain the facilities action control number from the Office of Procurement (Code KDF). The contracting officer will obtain the facilities action control number by letter or telegram as the urgency of each case demands. Such communications will include as a minimum:

(1) The proposed contract number;

(2) Name of contractor and plant location;

(3) A brief description of the facilities and purpose of expansion, and

(4) Total estimated cost of the additional Government facilities to be provided.

Application for and justification of facilities so provided will be in accordance with this Subpart 18–13.51. When the related procurement contract is awarded, the contracting officer will insure that an appropriate facilities clause is included according to § 18–13.401–1.

§ 18–13.5103 Processing the application.

(a) Upon receipt of a formal facilities application, the contracting officer will:

(1) Forward 3 copies of the application to the appropriate installation technical office for review and request comments and recommendations as to the technical aspects and overall scope of application.

(2) Forward 1 copy to the Office of Procurement (Code KDF) for information.

(3) Forward 1 copy to the appropriate small business specialist for review pursuant to the provision of Subpart 18–1–702.

(4) Initially appraise and obtain correction for any proposal deficiencies, including;

(i) Review facilities application for adequacy and completeness;

(ii) Delete items which duplicate contractor facilities having open time available;

(iii) Investigate the possibility of increasing subcontracting to reduce or eliminate the need for Government-provided facilities;

(iv) Examine loading methods used by the contractor in developing facilities requirements;

(v) Analyze the validity of the justification;

(vi) Process nonseverable facilities in accordance with § 18–13.406 and eliminate where not justified, and

(vii) Appraise the contractor's statement of the availability of local service (utilities, labor, housing, transportation, etc.) which may be necessary to support a proposed expansion.

(b) Based upon his evaluation of the application, and the comments and recommendations of the appropriate installation technical office, the contracting officer will forward his findings and recommendations together with 1 copy of the application to the cognizant installation project manager for review and approval. In making the request, the contracting officer will include the dollar amount recommended for approval and a request that a purchase request in that monetary amount be furnished to him for supporting the facilities contract.

§ 18–13.5104 Administration of approved facilities application.

After negotiation of a facilities contract or amendment thereto providing for the furnishing of Government facilities, NASA Headquarters approval will be obtained pursuant to § 18–13.403 and the administrative phase of the procurement will be treated as follows:

(a) The contracting officer or his authorized representative assigned to administer the facilities contract will determine necessity for the individual items listed on the approved application. The determination of necessity will be made on the basis of the installation technical office confirmation of requirements.

(b) The contracting officer or his authorized representative will identify equipment which may be available from existing Government inventories and will request assistance of the Office of Procurement (Code KDF) in screening idle inventories. Allocation of idle equipment will be requested by the contractor through and with the concurrence of the NASA contracting officer pursuant to Subpart 18–13.50. If screening of any item of idle production equipment on an approved application cannot be completed prior to the required release for procurement date, the contracting officer or his representative may approve purchase of the item without further screening.

(c) Revisions to the approved application to conform to determination of necessity will be subject to the approval of the contracting officer. The determination of necessity will be made as expeditiously as possible and normally will be made on the basis of the contractor's statement that the justification as delineated in the approved application remains valid; the contracting officer may, however, request additional justification, if, in his judgment, such a request is justified.

(d) Substitution of items for similar items listed on an approved application may be considered when necessitated by engineering changes, technological changes, or nonavailability in reserve inventories, and may be approved by the contracting officer or his authorized representative when the substituted item either:

(1) Falls within the same schedule subcategory as the previously approved item, or

(2) Is justified for the same intended function and remains within the estimated cost of the previously approved item, or

(3) In cases of justified necessity, exceeds such amount provided that the approved dollar amount of the Appendix A schedule category is not exceeded.

Proposed substitutions not meeting the foregoing standard will be processed as

facilities expansions in accordance with this Subpart 18–13.5104.

§ 18–13.5105 Format for industrial facilities application.

(APPENDIX A, CONTRACT No. ------)

Date: ----------

NAME AND ADDRESS OF COMPANY

Nature of facilities: (Insert here the types of proposed facilities such as laboratories, warehouses, machine tools, etc.).

Location: (Address where facilities are to be located).

For the support of: (Give brief statement covering work to be performed).

SUMMARY SHEET

Schedule I—Land and Land Preparation

	Estimated cost
(a) Land	$xxx, xxx
(b) Land Preparation	xxx, xxx
	xxx, xxx

Schedule II—Buildings and Structures

(a) New Construction	$xxx, xxx
(b) Rehabilitation Only	xxx, xxx
(c) Installations (not mechanical)	xxx, xxx
(d) Improvements on Government Property	xxx, xxx
(e) Improvements on non-Government Property	xxx, xxx
(f) Architect - Engineering Services	xxx, xxx
	xxx, xxx

Schedule III—Machinery, Equipment and Instrumentation

(a) Machine Tools	$xxx, xxx
(b) Related Production Equipment	xxx, xxx
(c) Rehabilitation of Machine Tools Only	xxx, xxx
(d) Building Installations (mechanical)	xxx, xxx
(e) Laboratory and Testing Equipment	xxx, xxx
(f) Furniture and Equipment	xxx, xxx
Total	xxx, xxx

Schedule IV—Portable Tools and Materials Handling and Automotive Equipment

(a) Portable Tools	$xxx, xxx
(b) Material Handling and Automotive Equipment	xxx, xxx
Total	xxx, xxx

Schedule V—Machinery and Equipment Installation Costs

Total	$xxx, xxx
Grand total	xx, xxx, xxx

DETAILED DESCRIPTIONS OF SCHEDULES

Schedule I—Land and Land Preparation

	Estimated cost
Item No.: (a) Land: Give legal description acreage, location and estimated cost. A map, print, or drawing must be furnished as Exhibit I showing location of plant in relation to adjacent terrain features such as: airports, highways, railroads, power lines, etc., with appropriate identifying designation of each. Cost of land will include all estimated costs of sales which are payable by purchasers.	
Total Schedule I(a)	$xxx, xxx
(b) Land Preparation: Include improvements such as clearing, leveling, grading and drainage, and any other items not subject to depreciation by item and estimated cost of each item.	
Total Schedule I(b)	xxx, xxx
Total Schedule I	xxx, xxx

Schedule II—Buildings and Structures

Item No.: (a) New Construction: Include a full list of structures, with complete description and estimated cost of each unit. One or more prints or sketches must be furnished as an exhibit for each building (showing relation to complete plant), the proposed type of structure, floor plan and elevations, with brief memorandum specifications cross referencing appropriate exhibits. (Architect-Engineer Services $xxx,xxx.)	
Total Schedule II(a)	x, xxx, xxx
(b) Rehabilitation Only: Cover all rehabilitation of structure, electrical systems, plumbing, heating, water lines, etc., within structures with estimated cost of each item. (Architect-Engineer Services $xx,xxx.)	
Total Schedule II(b)	xxx, xxx

Schedule II—Buildings and Structures—Con.

(c) Installations (not mechanical): Cover all items and materials and cost therefore, including charges for installation, used in connection with installations of electrical power and illumination, plumbing, heating, air conditioning, sprinkler systems, etc., usually included in building costs with the exception of power lines, water lines, etc., outside of the building itself which are to be included in Schedule II (d) and (e). Items listed here should refer to the individual building as listed in Schedule II (a) above, and must be described in sufficient detail for cost evaluation. (Architect-Engineer Services $xxx,xxx.)	
Total Schedule II (c)	xxx, xxx
(d) Improvements on Government Property: This includes paving of yards, runways, parkings areas, etc., fencing of property, utilities improvements, and spur tracks on areas outside of buildings but on property owned or controlled by the Government and leased to the contractor. Give full details including costs and installation charges, of each item and the location of each on an appropriate plot plan. (Architect-Engineer Services $xxx,xxx.)	
Total Schedule II (d)	xxx, xxx
(e) Improvements on non-Government Property: Same as (d) above.	
Total Schedule II (e)	xxx, xxx

Schedule II—Buildings and Structures—Con.

(f) Architect-Engineer Services.	
Total Schedule II (f) (a, b, c, d, and e)	xxx, xxx
Total Schedule II	xxx, xxx

SPECIAL INSTRUCTIONS PERTAINING TO SCHEDULES I AND II

Estimated Architect-Engineer Services Costs are to be established for each construction or rehabilitation project but excluded from Schedule II subtotals for other items of Schedule II. Total estimated cost of Architect-Engineer Services should be entered under Schedule II(f).

If there are costs for utilities, railroad extensions, etc., but not on property owned or controlled by the Government and leased to the contractor, such costs must be included in II(e).

Every effort should be made to pursuade utility companies, railroad companies, or other owners of the realty, to absorb all or part of the costs of such items. If no portion of the cost of such items will be paid by the utility, railroad company, or land owner, a statement to that effect, signed by an official of such company, must be included.

Where the Government is requested to pay for all or part of such off site installation costs, a definite statement from the applicant justifying the necessity for such costs must be included. Cross reference from descriptions to Exhibits must be made in order that details may be made clear. In the event Government expenditure is authorized for any off site land installation, an agreement protecting the interest of the Government must be negotiated.

Sufficient information shall be provided so as to permit a reviewer to not only analyze and evaluate the requirements for each item but also to analyze and evaluate all items as a total requirement.

Schedule III—Machinery, Equipment, and Instrumentation

Item No.	Quantity	Description	Estimated cost	Date required
x	x	(a) Machine Tools (new and used). Include welders, presses, and hammers. Specify if item is used.	$xx, xxx	x
x	x	Costs of installation will be entered parenthetically under description but not added in group or Schedule III(a) subtotal. This charge will be included in Schedule V. (Example: Installation Cost $------ each).		
		Total Schedule III(a)	xx, xxx	
x	x	(b) Related Production Equipment: Sheet metal equipment, foundry equipment anodizing and plating equipment, and other production equipment of a permanent nature necessary for production. Show installation cost as indicated in Schedule III(a) instructions.		
		Total Schedule III(b)	xxx, xxx	x

Schedule III—Machinery, Equipment, and Instrumentation—Continued

Item No.	Quantity	Description	Estimated cost	Date required
x	x	(c) Rehabilitation of Machine Tools Only: Rehabilitation of machine tools only are to be included in this item. Show installation costs as indicated in Schedule III(a) instructions.	xxx, xxx	x
		Total Schedule III(c)	xxx, xxx	
x	x	(d) Building Installations (Mechanical): Stokers, motors, and their mechanical systems, installed in buildings, including cranes, hoists, conveyor systems, etc. Show installation costs as indicated in Schedule III(a) instructions.	xxx, xxx	x
		Total Schedule III(d)	xxx, xxx	
x	x	(e) Laboratory and Testing Equipment: Show installation costs, if any, as indicated in Schedule III(a) instructions.	xxx, xxx	x
		Total Schedule III(e)	xxx, xxx	
x	x	(f) Furniture and Equipment: Office furniture and equipment, cafeteria furniture and equipment, standard work benches, stock bins, lockers, fire protection devices not part of building, etc. Show installation cost, if any, as indicated in Schedule III(a) instructions.	xxx, xxx	x
		Total Schedule III(f)	xxx, xxx	
		Total Schedule III	xxx, xxx	

SPECIAL INSTRUCTIONS PERTAINING TO SCHEDULE III ITEMS

1. These instructions are to establish a standard for listing all proposed items of machinery and equipment. In order to properly evaluate such a listing, it is absolutely necessary for items to be described so that they can be easily identified. Also, itemize and give sufficient description to justify cost. However, like items may be combined as a single entry, so long as purpose and justification remain the same.

2. A satisfactory description should include the following data:

a. Manufacturer's name.

b. Manufacturer's model number.

c. Complete nomenclature and description of size and capacity, type (plain universal, knee or bed, vertical, horizontal, etc.) number of spindles, working heads or units, etc. (where applicable), including any special features.

d. Electrical characteristics (110 v, 220 v, 440 v, 3 phase, 60-cycle, AC or DC, etc.).

e. Any other information necessary to completely identify items desired.

f. Possible substitutions in order of desirability.

g. Date of delivery for each item as required to meet delivery schedule of the contract in question.

h. Estimated delivery cost of each item.

i. Full Commodity Classification Code (i.e., PEC, FSC, or SCC, as applicable) as set forth in Appendix A to the NASA Industrial Property Control Manual (NPC 105).

j. Give specific nomenclature in all cases. For example: welders—indicate whether spot, arc, butt, flash, the manufacturer, throat size, electrical characteristics, frame size; furnaces—manufacturer, model, size and capacity, electrical specifications, whether gas, oil, or electrically fired, etc. Size and capacity can be given, along with complete nomenclature, even though model may not be applicable, for all items of related production equipment.

3. Purpose and detailed justification.

4. Costs of installation, entered parenthetically and excluded from Schedule III Subtotals and Totals, should be entered as Schedule V, Machinery and Equipment Installation Costs.

Schedule IV—Portable Tools and Material Handling and Automotive Equipment

Item No.	Quantity	Description	Estimated cost	Date required
x	x	(a) Portable Tools: Portable electric and pneumatic tools.	$xxx, xxx	x
		Total Schedule IV(a)	$xxx, xxx	
x	x	(b) Material Handling and Automotive Equipment: All automobiles, trucks, and tractors used for transportation, and material handling vehicles such as lift trucks, trailers, etc.		
		Total Schedule IV(b)	$xxx, xxx	
		Total Schedule IV	$xxx, xxx	

Schedule V—Machinery and Equipment Installation Costs

Schedule III(a)	$xx, xxx
Schedule III(b)	xxx, xxx
Schedule III(c)	xx, xxx
Schedule III(d)	xxx, xxx
Schedule III(e)	xx, xxx
Schedule III(f)	xx, xxx
Total Schedule V	x, xxx, xxx

NOTE: Individual item installation costs as set forth in Schedule III (a, b, c, d, e, and f) are to be excluded from Schedule III subtotals and totals. Such totals should be entered as Schedule V, Machinery and Equipment Installation Costs.

§ 18–13.5106 Format for presenting justification data.

(a) *Contractor.* Contractor (or subcontractor) name (legal name), and address, company representative to contact, telephone number and extension; type of company organization (corporation, partnership, etc.); State in which incorporated, if applicable.

(b) *Location.* Location of proposed facilities expansion; indicate whether site is privately owned or Government-owned; if Government-owned, list the Government agency that has jurisdiction. Describe briefly the availability of labor, power, fuel, water, sewage disposal, housing, transportation, etc.

(c) *Purpose of expansion.* Identify item or system to be developed, tested and/or produced.

(d) *Basis of need.* Reference approved NASA program from which need for facilities directly arises. Also cite the relationship of this project to other elements of the approved program.

(e) *Subcontracting.* Percentage of subcontracting planned by dollar amount and/or percent of total effort. Justify level of planned subcontracting. To the degree possible, identify subcontractors and the items to be subcontracted. Justify reasons for not subcontracting additional work. If facilities are anticipated for subcontractors, so identify.

(f) *Financial progress.* Provide a 5-year summary of the contractor's financial progress as follows (by company division, if appropriate):

Year	Net profit	Dividends paid	Invested in facilities	Depreciation charged	Net company owned facilities after depreciation	Retained income
19—						
19—						
19—						
19—						
19—						
Etc.						

(g) *Dollar comparison.* Provide a dollar comparison of:

Schedules	All facilities provided previously (at proposed location)		Facilities to be provided this proposal	
	Contractor	Government	Contractor	Government
I				
II				
III				
IV				
V				
Total				

(h) *Financing.* The contractor will justify his reasons for not financing the proposed expansion with corporate or company funds.

(i) *Other uses.* State the portion or percentage of the expanded capacity that will be used by other NASA Procurement Offices, or other Federal agencies. Identify the specific items and the NASA Procurement Offices of Federal agencies.

(j) *Complete facility.* If the proposed expansion does not constitute a complete facility, cite the elements that are not included and how they will be provided.

PART 18–14—INSPECTION AND ACCEPTANCE

Sec.

18–14.000 Scope of part.

Subpart 18–14.1—Inspection

18–14.100 Definitions.
18–14.101 General.
18–14.102 Activities responsible for inspection.
18–14.103 Inspection agreements.
18–14.104 Contractor responsibility.
18–14.105 Places of inspection.
18–14.105–1 General.
18–14.105–2 Inspection at source.
18–14.105–3 Inspection at destination.
18–14.106 Inspection of small purchases ($2,500 or less).
18–14.107 Rejection of nonconforming supplies or services.
18–14.108 Government inspection under subcontracts.

Subpart 18–14.2—Acceptance

18–14.201 General.
18–14.202 Delivery under F.O.B. origin contracts.
18–14.203 Point of acceptance.
18–14.204 Responsibility for acceptance.
18–14.205 Acceptance of supplies or services not conforming with contract requirements.

Subpart 18–14.50—Procedures for Utilization of Government Inspection Agencies for Quality Assurance Functions at NASA Suppliers' Plants

18–14.5000 Scope of subpart.
18–14.5001 Definitions.
18–14.5002 Procedures.
18–14.5003 Guidelines for use in arranging for quality assurance functions at NASA suppliers' plants.

AUTHORITY: The provisions of this Part 18–14 issued under 42 U.S.C. 2473(b)(1).

§ 18–14.000 Scope of part.

This Part 18–14 covers instructions concerning inspection and acceptance of supplies or services under NASA contracts (other than construction contracts).

Subpart 18–14.1—Inspection

§ 18–14.100 Definitions.

(a) "Inspection" means the examination (including testing) of supplies and services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the supplies and services conform to contract requirements, including all applicable drawings, specifications, and purchase descriptions.

(b) "Testing" is an element of inspection and generally denotes the determination by technical means of the physical and chemical properties or elements of materials, supplies, or components thereof, involving not so much the element of personal judgment as the application of established scientific principles and procedures.

§ 18–14.101 General.

(a) Except as permitted by § 18–14.204, inspection on behalf of the Government shall be conducted in all cases prior to acceptance. Inspection shall be accomplished by or under the supervision of Government personnel. Except as otherwise provided in the contract, test requirements may be performed in the contractor's or subcontractor's laboratory or any other commercial laboratory acceptable to the Government. The contractor may be required under the terms of the contract to establish and maintain an acceptable inspection or quality control system to ensure compliance with contract specifications with a minimum of Government inspection supervision. A manufacturer's certificate or other statement of quality or quantity may be considered in determining whether supplies or services are in conformity with the contract; but no provision of the contract shall preclude the Government from performing inspection.

(b) The type and extent of inspection needed depend on the particular procurement. For example, on items which would involve small losses in the event of defects and which would probably be replaced by suppliers without contest, inspection may consist only of checks for identity, quantity, and shipping damage. Detailed requirements for spare systems and elements thereof are contained in "Quality Assurance Provisions for Government Agencies" (NPC 200–1A), and Subpart 18–14.50.

§ 18–14.102 Activities responsible for inspection.

Inspection, or the arrangement therefor, is the responsibility of the installation effecting or administering the procurement. When a NASA installation uses the inspection services of another executive agency, the agency performing the inspection has primary inspection responsibility and its determinations relative thereto are binding on the NASA installation for which the services are performed. However, whenever NPC 200–1A applies, the NASA installation retains primary inspection responsibility.

§ 18–14.103 Inspection agreements.

(a) In the interest of achieving economy and efficiency in the inspection of contract items, procurement offices shall utilize the inspection services of other executive agencies to ensure the most economical inspection consistent with the best interests of the Government. The purpose of inspection interchange agreements is to eliminate duplication, overlapping, or multiple assignments of inspection activity in any one plant.

(b) Agreements have been entered into by NASA with the Departments of the Air Force (see NASA Management Instruction 2–3–4), the Navy (see NASA Management Instruction 2–3–6), and the Army (see NASA Management Instruction 2–3–9), relating to the performance of field service functions, including inspection, test, and acceptance, in support of NASA contracts. The procedures set forth in these agreements shall be observed by all NASA procurement offices in arranging for performance of inspection by these Departments. Inspection agreements may also be used between NASA field installations in order to achieve maximum economy and efficiency.

§ 18–14.104 Contractor responsibility.

The inspection clauses included in NASA contracts require the contractor to maintain an inspection system acceptable to the Government and records of all inspection work performed by the contractor. The contractor's inspection system should be such as to provide reasonable assurance that the supplies and work under the contract will conform to contract requirements and should include any quality control procedures necessary to this end. In any case, when Federal or Military specifications are used to establish requirements in the contract, the supplier shall be required to perform all examinations and tests called for by the specifications except those which the Government is expressly required to make.

§ 18–14.105 Places of inspection.

§ 18–14.105–1 General.

Each contract shall designate the place or places of inspection. Inspection of supplies and services shall be made at such times and places (including any stage during the period of manufacture and including subcontractors' plants) as are necessary to determine that the supplies and services conform to contract requirements. When the contract provides for inspection at source, shipment prior to inspection may be authorized if it is determined to be in the best interest of the Government. In such cases, to the extent appropriate, the contract should be modified prior to shipment with respect to (a) risk of loss in transit and (b) shipping and other expenses incurred in the event of rejection at destination.

§ 18–14.105–2 Inspection at source.

Supplies and services shall be inspected at source when:

(a) Inspection at any other point would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections;

(c) Special instruments, gauges, or facilities required for inspection are available only at source;

(d) Inspection at any other point would destroy or require the replacement of costly special packing and packaging;

(e) Quality control and inspection are closely related to production methods;

(f) Supplies requiring technical inspection are destined for points of embarkation for overseas shipment; or

(g) Otherwise determined to be in the best interest of the Government.

§ 18–14.105–3 Inspection at destination.

Supplies and services shall be inspected at destination when:

(a) Deliveries of supplies purchased "off the shelf" are made from a point other than that of manufacture;

(b) Necessary testing equipment is located only at destination;

(c) Biologicals being purchased are processed under direct control of the National Institutes of Health or the Federal Food and Drug Administration;

(d) The volume of procurement at a given plant is not sufficient to warrant the increased cost of inspection at origin; or

(e) Otherwise determined to be in the best interest of the Government.

§ 18–14.106 Inspection of small purchases ($2,500 or less).

(a) This § 18–14.106 applies to all small purchases, including items described in Federal and Military specifications, and qualified products. In determining the type and extent of Government inspection to be required on small purchases, the smallness of possible losses and the likelihood of uncontested replacement of defective articles shall be considered.

(b) Generally, inspection of small purchases shall be at destination. Purchasers, users, and installers may be considered inspectors for small purchase inspection purposes.

(c) Unless detailed technical inspection is necessary, inspection shall consist of examination of (1) type and kind; (2) quantity; (3) damage; (4) operability, if readily determinable; and (5) packaging and marking, if applicable.

(d) Detailed technical inspection shall be performed if special specifications are involved or if defective supplies can harm personnel or equipment.

(e) Detailed technical inspection may be limited to a check of characteristics that require separate specifications and of those likely to cause harm. Such inspection may be limited to inspection of occasional purchases of the same item from the same manufacturing source when there is good reason to rely upon the integrity of the manufacturer because of known safeguards and a significant history of defect-free purchases.

(f) Adjustments for short shipments or defective supplies shall be requested from suppliers when recovery will benefit the Government.

§ 18–14.107 Rejection of nonconforming supplies or services.

Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise, such correction or replacement shall be without additional cost to the Government. Notices of rejection of nonconforming supplies or services need not be in writing unless (a) the supplies have been delivered to a point other than the contractor's plant, (b) the contractor persists in offering nonconforming supplies or services for acceptance, or (c) delivery or performance is overdue without excusable cause. The reasons for rejection normally shall be stated, and the contractor may be given any suggestions that might help in eliminating the cause of rejection. If timely notice of rejection is not furnished to the contractor, acceptance may, in certain cases, be implied as a matter of law from such omission. Therefore, notices of rejection should be furnished promptly to contractors whenever rejection is intended.

§ 18–14.108 Government inspection under subcontracts.

Government inspection of subcontracted supplies or services shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government inspector at the prime contractor's plant in determining the conformance of supplies or services with contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies and services that do not qualify under the criteria in § 18–14.105–2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies and workmanship for which certificates, records, reports, and similar evidence of quality are available at the prime contractor's plant shall not be Government-inspected at the subcontractor's plant except occasionally to verify such evidence. However, Government inspection shall be performed at a subcontractor's plant whenever the Government contract requires. All oral and written statements and contract provisions relating to the inspection of subcontracted supplies shall be so worded as not to (a) affect the contractual relationship between the prime contractor and the Government or between the prime contractor and the subcontractor, (b) establish a contractual relationship between the Government and the subcontractor, or (c) constitute a waiver of the Government's right to inspect or reject supplies.

Subpart 18–14.2—Acceptance

§ 18–14.201 General.

As used in NASA contracts "Acceptance" generally means the act of an authorized representative of the Government by which the Government assents to ownership by it of existing and identified supplies, or approves specific services rendered as partial or complete performance of the contract. Except as provided in § 18–14.205, and subject to other terms and conditions of the contract, the Government thereby acknowledges that the supplies or services are in conformity with contract requirements, including those of quality, quantity, packaging, and marking. Depending upon the provisions of the contract, acceptance may be effected prior to, at the time of, or after delivery. However, supplies and services shall not be accepted prior to inspection, except as stated in § 18–14.204. Acceptance shall ordinarily be accomplished by execution of an acceptance certification on the applicable inspection and receiving report form. When acceptance is accomplished at a point other than destination, supplies shall not be reinspected at destination for acceptance purposes.

§ 18–14.202 Delivery under F.O.B. origin contracts.

(a) Satisfactory evidence of delivery is required before payment other than progress or advance payments may be made under fixed-price supply contracts. Under contracts calling for deliveries F.O.B. origin, the contracting officer or his authorized representative, in certifying that delivery has been made, may, at his discretion, rely on the contractor's signed statement on the invoice that delivery has been made on a specified date to a named carrier or to a representative of the Government. When necessary to protect the Government's interest, the contracting officer may require either that the contractor furnish a receipted copy of the bill of lading or postal receipt, or that a representative of the Government certify as to actual delivery on the applicable inspection and receiving report form. Invoicing instructions to F.O.B. origin contractors shall require that the contractor state on all invoices (1) the date of shipment, name of carrier, and bill of lading number, or (2) the name and title of the Government representative to whom delivery was made and the date of such delivery.

(b) When payment has been made on the basis of a certificate and the supplies have not been received at destination, prompt follow-up and remedial action shall be initiated.

§ 18–14.203 Point of acceptance.

Each contract shall specify the point of acceptance. Contracts which provide for delivery F.O.B. destination shall provide for acceptance at destination whether inspection is to occur at destination or at origin. Contracts which provide for delivery F.O.B. origin ordinarily shall provide for acceptance (and inspection) at origin.

§ 18–14.204 Responsibility for acceptance.

(a) Acceptance is the responsibility of the contracting officer or his authorized representative. When a NASA installation utilizes the services of another executive agency for the purpose of acceptance, acceptance by the other agency is binding on the NASA installation for which the services are performed. (See § 18–14.103 regarding performance for NASA of field service functions, including acceptance, by the Departments of the Army, Navy, and Air Force.) For Category 1 and 2 procurements (as defined in § 18–1.5002), final acceptance may be deferred, under appropriate contract provisions, until satisfactory system integration is accomplished, or until other special conditions are fulfilled.

(b) A supplier's certificate of conformance with requirements may be considered a proper element incident to acceptance of supplies or services. A contractor's certificate may be used for Government acceptance prior to inspection on selected Category 3 procurements (as defined in § 18–1.5002). At the discretion of the contracting officer, a clause may be inserted in contracts requiring the contractor to certify that supplies comply with contract requirements. However, when acceptance precedes inspection, a clause will be used to reserve the Government's right after

acceptance to inspect the supplies within a reasonable time after delivery and to reject defective items. Certificates of conformance shall be required by the contract when the value of supplies or the condition of purchase, delivery, receipt, or use thereof makes it desirable to have additional assurance that supplies conform to contract requirements.

§ 18–14.205 Acceptance of supplies or services not conforming with contract requirements.

When supplies or services tendered for acceptance do not conform with contract requirements, the applicable contract provisions shall govern the action to be taken (see § 18–14.107). For reasons of economy or the urgency of the requirement, acceptance of supplies or services which do not meet all contract requirements may occasionally be desirable. Prior to such acceptance, the contracting officer shall obtain the approval of the requiring activity where the nonconformity with contract requirements (a) affects matters such as safety, durability, performance, or interchangeability of parts or assemblies, (b) results in material increases in weight where weight is a significant consideration, or (c) affects the basic objectives of the specifications. Acceptance of these types of nonconforming supplies or services shall be covered by an appropriate modification of the contract. Acceptance of other types of nonconforming supplies and services shall be covered by contract modification if determined necessary by the contracting officer.

Subpart 18–14.50—Procedures for Utilization of Government Inspection Agencies for Quality Assurance Functions at NASA Suppliers' Plants

§ 18–14.5000 Scope of subpart.

This Subpart 18–14.50 establishes procedures and guidelines for utilizing Government inspection agencies to assist NASA installations in judging contractor performance of the quality assurance aspects of contracts for space systems and parts thereof.

§ 18–14.5001 Definitions.

(a) *Quality assurance.* A planned and systematic pattern of all actions necessary to provide adequate confidence that the end items will perform satisfactorily in actual operations.

(b) *Space system.* A system which includes launch vehicle(s), spacecraft, ground support equipment, and test hardware which are used in ground testing, launching, operating, and maintaining vehicles or craft in space.

§ 18–14.5002 Procedures.

(a) In arranging for inspection, NASA installations shall designate the Government inspection agency, as appropriate, and:

(1) Provide a definitive statement of quality and related engineering effort required of the inspection agency (see Subpart 18–1.50);

(2) Review NASA requirements with the Government inspection agency early in the procurement procedure and periodically as the contract work progresses;

(3) Determine the work requirements to be delegated to the inspection agency and at the same time provide for—

(i) NASA engineering representation and technical liaison at the plant and test sites;

(ii) NASA performance of quality assurance functions which are not delegated; and

(iii) Designation of individuals at the NASA installation responsible for quality, engineering, and documentation matters for the contract;

(4) Request the Government inspection agency to prepare and document a quality assurance and inspection plan on the basis of NASA requirements and NPC 200–1;

(5) Review such plans as early as possible and whenever revisions or additions are made during the progress of the work;

(6) Provide for continuous assessment of actual product quality by the installation through (i) plant visits, (ii) quality surveys, and (iii) review of quality data, regular reports, and trouble reports, including pertinent investigations and analyses by contractors and suppliers, and by the Government inspection agency;

(7) Provide the Government inspection agency with program information to enable planning for technically competent field personnel to be trained and available when required for assigned work; and

(8) Provide, as required, for training of Government inspection agency and contractor quality assurance personnel as an integral part of the quality assurance program.

(b) Each installation shall reimburse Government agencies performing work for NASA in accordance with current procedures.

§ 18–14.5003 Guidelines for use in arranging for quality assurance functions at NASA suppliers' plants.

(a) *General.* (1) Circumstances will vary the timing, order, and selection of pertinent items. For major space systems, it is desirable to initiate as many arrangements as possible during the precontract negotiation period.

(2) Since the contracting officer is the only official of the Government authorized to bind the Government contractually in dealings with contractors, it is essential that all actions which affect the contract be taken through the contracting officer.

(3) NASA representatives visiting plants where inspection services are being performed for NASA by a Government inspection agency shall notify the inspection agency in advance of the purpose of the visit. Any instructions, decisions, or advice to the contractor shall be provided either simultaneously to the contractor and inspection agency, or via the inspection agency. All oral commitments shall be confirmed in writing.

(b) *Initial arrangements.* (1) Furnish a letter (which may confirm telephone conversation) to the Government inspection agency indicating intent to discuss inspection assignment or, after formal assignment, to provide details.

(2) Provide the Government inspection agency with NASA documents pertinent to the purchase of contract involved, and the following additional documents:

(i) "Quality Assurance Provisions for Government Agencies" (NPC 200–1A); and

(ii) Pertinent NASA technical direction for use by the Government inspection agency in product and process verification, quality system evaluations, and technical data documentation (or indicate when and where these will be available).

(3) Arrange for a pre-inspection conference between the Government inspection agency and the NASA installation to finalize NASA requirements.

(4) Arrange for a post-award conference between the supplier, the Government inspection agency, and the NASA installation.

(c) *Pre-inspection conference with Government inspection agency.* (1) Review NASA requirements for quality assurance and technical representation at plant and test sites, including:

(i) Review of contract requirements;

(ii) Review of separate technical direction to Government inspection agency;

(iii) Clarification of quality requirements in subparagraphs (i) and (ii) of this paragraph, and determination of any omissions or conflicts for NASA resolution;

(iv) Specification of NASA criteria applicable to the contract for selection of subcontract items requiring Government inspection at source; and

(v) Arranging for providing NASA documents not already on hand.

(2) Review Government inspection agency's quality assurance and inspection plan, including:

(i) Determination of the adequacy of proposed Government action;

(ii) Review of the numbers and qualifications of proposed Government inspection agency manpower for various stages of contract;

(iii) Determination of work to be delegated to the Government inspection agency;

(iv) Where a Material Review Board at a supplier's plant is authorized to act on nonconforming material, making certain that the Government inspection agency representative is technically qualified to make decisions within the scope delegated to the Government inspection agency (otherwise, the NASA installation shall provide the Government representative on this board); and

(v) Arranging for the NASA installation to provide—

(A) NASA performance of quality assurance functions not delegated;

(B) NASA engineering representation and technical liaison at the plant and test sites; and

(C) Designation (by the contracting officer, in writing) of individuals at the responsible NASA installation to be contacted directly for quality, engineering, and documentation matters for the contract.

(3) Review and discuss past quality history of supplier including:

(i) Government inspection agency quality system evaluation results, known supplier quality system deficiencies, and supplier's progress in correcting these deficiencies; and

(ii) Government inspection agency quality performance records for similar items, particularly troubles, product or process deficiencies, and supplier's corrective action.

(4) Arrange for a NASA-directed quality system evaluation, if desired by NASA installation.

(5) If more than one Government inspection agency is involved in research and development work at a plant, determine as early as possible which agency should perform desired inspection.

(d) *Post-award conference with supplier and Government inspection agency.* (1) Review and discuss applicable items from paragraph (c) of this section.

(2) Review supplier's quality program planning, including:

(i) A flow chart or tabulation showing supplier's quality assurance operations in general terms (i.e., what, where and how);

(ii) Revisions or additions to present quality operations to satisfy quality assurance provisions of the contract;

(iii) The time schedule for supplier-prepared technical documents satisfying quality assurance needs of Government inspection agency and NASA installation;

(iv) The contract time schedule or planned events affecting quality assurance operations;

(v) The inspection and testing equipment and facilities available and planned;

(vi) The preliminary system and subsystem interface relationships affecting quality assurance operations;

(vii) Other arrangements necessary to assure system compatibility; and

(viii) The supplier's organizational structure.

(3) In connection with the review of the supplier's quality program, determine the location of proposed Government inspection and control stations.

PART 18–15—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

18–15.000 Scope of part.

Subpart 18–15.1—Applicability

18–15.101 Scope of subpart.
18–15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.
18–15.103 Cost-reimbursement research contracts with educational institutions.
18–15.104 Construction contracts.
18–15.105 Contracts for industrial facilities.
18–15.106 Use of cost principles for fixed-price contracts.
18–15.107 Advance understandings on particular cost items.

Subpart 18–15.2—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

18–15.201 Basic considerations.
18–15.201–1 Composition of total cost.
18–15.201–2 Factors affecting allowability of costs.
18–15.201–3 Definition of reasonableness.
18–15.201–4 Definition of allocability.
18–15.201–5 Credits.
18–15.202 Direct costs.
18–15.203 Indirect costs.
18–15.204 Application of principles and procedures.
18–15.205 Selected costs.
18–15.205–1 Advertising costs.
18–15.205–2 Bad debts.
18–15.205–3 Bidding costs.
18–15.205–4 Bonding costs.
18–15.205–5 Civil defense costs.
18–15.205–6 Compensation for personal services.
18–15.205–7 Contingencies.
18–15.205–8 Contributions and donations.
18–15.205–9 Depreciation.
18–15.205–10 Employee morale, health, and welfare costs and credits.
18–15.205–11 Entertainment costs.
18–15.205–12 Excess facility costs.
18–15.205–13 Fines and penalties.
18–15.205–14 Food service and dormitory costs and credits.
18–15.205–15 Fringe benefits.
18–15.205–16 Insurance and indemnification.
18–15.205–17 Interest and other financial costs.
18–15.205–18 Labor relations costs.
18–15.205–19 Losses on other contracts.
18–15.205–20 Maintenance and repair costs.
18–15.205–21 Manufacturing and production engineering costs.
18–15.205–22 Material costs.
18–15.205–23 Organization costs.
18–15.205–24 Other business expenses.
18–15.205–25 Overtime, extra-pay shift, and multishift premiums.
18–15.205–26 Patent costs.
18–15.205–27 Pension plans.
18–15.205–28 Plant protection costs.
18–15.205–29 Plant reconversion costs.
18–15.205–30 Precontract costs.
18–15.205–31 Professional service costs—legal, accounting, engineering, and other.
18–15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets.
18–15.205–33 Recruitment and relocation costs.
18–15.205–34 Rental costs (including sale and leaseback of facilities).
18–15.205–35 Research and development costs.
18–15.205–36 Royalties and other costs for use of patents.
18–15.205–37 Selling costs.
18–15.205–38 Service and warranty costs.
18–15.205–39 Severance pay.
18–15.205–40 Special tooling costs.
18–15.205–41 Taxes.
18–15.205–42 Termination costs.
18–15.205–43 Trade, business, technical, and professional activity costs.
18–15.205–44 Training and educational costs.
18–15.205–45 Transportation costs.
18–15.205–46 Travel costs.
18–15.205–47 Economic planning costs.

Subpart 18–15.3—Research Contracts With Educational Institutions

18–15.301 General.
18–15.302 Definitions.
18–15.302–1 Research agreements.
18–15.302–2 Apportionment.
18–15.302–3 Allocation.
18–15.302–4 Sponsoring agency.
18–15.302–5 Original complement.
18–15.302–6 Other institutional activities.
18–15.303 Direct costs.
18–15.304 Indirect costs.
18–15.305 Applicable costs.
18–15.306 Determination of indirect costs.
18–15.306–1 General.
18–15.306–2 Apportionment.
18–15.306–3 Allocation.
18–15.306–4 Overhead determinations acceptable under special circumstances.
18–15.307 General standards for selected items of cost.
18–15.307–1 Purpose and applicability.
18–15.307–2 Costs applicable to instruction.
18–15.307–3 Allowable and unallowable costs.

Subpart 18–15.4—Construction Contracts

Sec.	
18–15.400	Scope of subpart.
18–15.401	Basic consideration.
18–15.401–1	Applicable cost principles.
18–15.401–2	Special factors affecting the allowability of costs of construction contracts.
18–15.402	Selected costs.
18–15.402–1	Construction plant and equipment.
18–15.402–2	Construction plant and equipment rented from others.
18–15.402–3	Home office expense.
18–15.402–4	Job site expenses.
18–15.402–5	Temporary use of land, structures, and facilities.

Subpart 18–15.5—Contracts for Industrial Facilities

18–15.501	Applicable cost principles.
18–15.502	Factors affecting allowability of costs.
18–15.503	Allocation of indirect manufacturing and plant operational cost.
18–15.504	General and administrative costs (including home office allocations).
18–15.505	Contractor's commercial products.

Subpart 18–15.6—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

18–15.600	Scope of subpart.
18–15.601	Definition of fixed-price type contracts.
18–15.602	Basic considerations.
18–15.603	Cost principles and their use.

AUTHORITY: The provisions of this Part 18–15 issued under 42 U.S.C. 2473(b)(1).

§ 18–15.000 Scope of part.

This Part 18–15 contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost-reimbursement type contracts and contains guidelines for use, where appropriate, in the evaluation of costs in connection with certain negotiated fixed-price type contracts and contracts terminated for the convenience of the Government.

Subpart 18–15.1—Applicability

§ 18–15.101 Scope of subpart.

This Subpart 18–15.1 describes the applicability of Part 18–15 to the various types of contracts in connection with which cost principles and procedures are used.

§ 18–15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.

This category includes all cost-reimbursement type contracts for supplies, services, or experimental, developmental, or research work (other than with educational institutions, as to which § 18–15.103 applies) except that it does not include facilities contracts (see § 18–15.105) or construction contracts (see § 18–15.104). The cost principles and procedures set forth in Subpart 18–15.2 shall be incorporated by reference in cost-reimbursement supply and research contracts with other than educational institutions as the basis for:

(a) Determination of reimbursable costs under such contracts, including cost-reimbursement type subcontracts thereunder, and the cost-reimbursement portion of time-and-materials contracts except in such contracts where material is priced on a basis other than at cost;

(b) The negotiation of overhead rates; and

(c) The determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs, and for settlement of such contracts by determination.

§ 18–15.103 Cost-reimbursement research contracts with educational institutions.

This category includes all cost-reimbursement type contracts for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Subpart 18–15.3 shall be incorporated by reference in cost-reimbursement research contracts with educational institutions as the basis for:

(a) The determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) The negotiation of overhead rates; and

(c) The determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs, and for settlement of such contracts by determination.

In addition, Subpart 18–15.3 is to be used in determining the allowable costs of research and development performed by educational institutions under grants.

§ 18–15.104 Construction contracts.

(a) Subpart 18–15.4 contains principles and procedures for the evaluation and determination of costs in connection with contracts and subcontracts for construction. This category includes all contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(b) The applicability of Subpart 18–15.4 to fixed-price type contracts and subcontracts is set forth in Subpart 18–15.6.

(c) Subpart 18–15.4 applies to all cost-reimbursement type contracts for construction, as described in paragraph (a) of this section. The cost principles and procedures set forth in Subpart 18–15.4 shall be incorporated by reference in cost-reimbursement construction contracts as the basis for:

(1) The determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(2) The negotiation of overhead rates; and

(3) The determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" his costs, and for settlement of such contracts by determination.

§ 18–15.105 Contracts for industrial facilities.

This category includes all cost-reimbursement type contracts providing for the acquisition, construction, fabrication, installation, rehabilitation, or removal of industrial facilities as defined in § 18–13.101–6 (whether the Government already owns the facilities or acquires title under the contract), where the facilities are furnished to or acquired by the contractor for use in the performance of a Government contract or contracts. This category also includes those portions of fixed-price type contracts which provide for the furnishing by the contractor of facilities at cost. The cost principles and procedures set forth in Subpart 18–15.5 shall be incorporated by reference in cost-reimbursement type facilities contracts, and in fixed-price type contracts which provide for the furnishing by the contractor of facilities at cost as the basis for:

(a) The determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) The determination of reimbursable costs under facilities-at-cost provisions of fixed-price type contracts;

(c) The negotiation of overhead rates; and

(d) The determination of costs of terminated cost-reimbursement type contracts or the terminated facilities-at-cost portion of fixed-price type contracts, where the contractor elects to "voucher out" his costs, and for settlement of such contracts by determination.

§ 18–15.106 Use of cost principles for fixed-price contracts.

Subpart 18–15.6 provides guidance for the use of the provisions of Subparts 18–15.2, 18–15.3 and 18–15.4 where appropriate, in the evaluation of costs in connection with the negotiation of certain fixed-price type contracts and termination settlements.

§ 18–15.107 Advance understandings on particular cost items.

The extent of allowability of the selected items of cost covered in Subparts 18–15.2 through 18–15.5 has been stated to apply broadly to many accounting systems in varying contract situations. Thus, as to any given contract, the reasonableness and allocability of certain items of cost may be difficult to determine, particularly in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective contractors, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in cate-

gories where reasonableness or allocability is difficult to determine. Such agreement may also be initiated by contracting officers individually or jointly, for all defense work of the contractor, as appropriate. Any such agreement should be incorporated in cost-reimbursement type contracts, or made a part of the contract file in the case of negotiated fixed-price type contracts, and should govern the cost treatment covered thereby throughout the performance of the contract. But the absence of such an advance agreement on any element of cost will not, in itself, serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(a) Compensation for personal services;

(b) Use charge for fully depreciated assets;

(c) Deferred maintenance costs;

(d) Precontract costs;

(e) Research and development costs;

(f) Royalties;

(g) Selling and distribution costs; and

(h) Travel costs, as related to special or mass personnel movement.

Subpart 18–15.2—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

§ 18–15.201 Basic considerations.

§ 18–15.201–1 Composition of total cost.

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

§ 18–15.201–2 Factors affecting allowability of costs.

Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this Subpart 18–15.2, or otherwise included in the contract as to types or amounts of cost items.

§ 18–15.201–3 Definition of reasonableness.

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arm's-length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government, and the public at large; and

(d) Significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

§ 18–15.201–4 Definition of allocability.

A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a contract, product, product line, process, or class of customer or activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it:

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

§ 18–15.201–5 Credits.

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

§ 18–15.202 Direct costs.

(a) A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other work of the contractor are direct costs of that work and are not to be charged to the contract directly or indirectly. When items ordinarily chargeable as indirect costs are charged to Government work as direct costs, the cost of like items applicable to other work of the contractor must be eliminated from indirect costs allocated to Government work.

(b) This definition shall be applied to all items of cost of significant amount unless the contractor demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in § 18–15.203.

§ 18–15.203 Indirect costs.

(a) An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the contract or other work, as appropriate, indirect costs are those remaining to be allocated to the several classes of work.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses are separately grouped. Similarly, the particular case may require subdivisions of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(c) Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. This principle for selection is not to be applied so rigidly as to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(d) The method of allocation of indirect costs must be based on the particular circumstances involved. The method shall be in accord with those generally accepted accounting principles which are applicable in the circumstances. The contractor's established practices, if in accord with such accounting principles, shall generally be acceptable. However, the method used by the contractor may require re-examination when:

(1) Any substantial difference occurs between the cost patterns of work under the contract and other work of the contractor; or

(2) Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, the inventories, the volume of sales and production, manufacturing

processes, the contractor's products, or other relevant circumstances.

(e) A base period for allocation of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period will be the contractor's fiscal year; however, use of a shorter period may be appropriate in case of (1) contracts whose performance involves only a minor portion of the fiscal year, or (2) where it is general practice in the industry to use a shorter period. In any event, the base period or periods shall be so selected as to avoid inequities in the allocation of costs. When the contract is performed over an extended period of time, as many such base periods will be used as will be required to represent the period of contract performance.

(f) Other considerations with respect to overhead are set forth in Subpart 18–3.7.

§ 18–15.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent that they are reasonable (see § 18–15.201–3), allocable (see § 18–15.201–4), and determined to be allowable in view of the other factors set forth in §§ 18–15.201–2 and 18–15.205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(b) Costs incurred as reimbursements to a subcontractor under a cost-reimbursement type subcontract of any tier above the first fixed-price subcontract are allowable to the extent that allowance is consistent with the provisions of this Part 18–15 which is apropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this Subpart 18–15.2 were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if § 18–15.4 were incorporated in the subcontract.

(c) Selected items of cost are treated in § 18–15.205. However, § 18–15.205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in § 18–15.205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this Subpart 18–15.2 and, where appropriate, the treatment of similar or related selected items.

§ 18–15.205 Selected costs.

§ 18–15.205–1 Advertising costs.

(a) Advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the contractor of obligations arising under the contract, when considered in conjunction with all other recruitment costs, as set forth in § 18–15.205–33; (2) the procurement of scarce items for the performance of the contract; or (3) the disposal of scrap or surplus materials acquired in the performance of the contract. Costs of this nature, if incurred for more than one NASA contract or for both NASA work and other work of the contractor, are allowable to the extent that the principles in §§ 18–15.201–3, 18–15.201–4, and 18–15.203 are observed.

§ 18–15.205–2 Bad debts.

Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related collection costs, and related legal costs, are unallowable.

§ 18–15.205–3 Bidding costs.

Bidding costs are the costs of preparing bids or proposals on potential Government and non-Government contracts or projects, including the development of engineering data and cost data necessary to support the contractor's bids or proposals. Bidding costs of the current accounting period of both successful and unsuccessful bids and proposals normally will be treated as allowable indirect costs, in which event no bidding costs of past accounting periods shall be allowable in the current period to the Government contract. However, if the contractor's established practice is to treat bidding costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

§ 18–15.205–4 Bonding costs.

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of his business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 18–15.205–5 Civil defense costs.

(a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first aid training and supplies, fire-fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) Costs of capital assets under paragraph (a) of this section are allowable through depreciation in accordance with § 18–15.205–9.

(c) Contributions to local civil defense funds and projects are unallowable.

§ 18–15.205–6 Compensation for personal services.

(a) *General.* (1) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans. Except as otherwise specifically provided in § 18–15.205–6, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(2) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contracor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above test. Such test need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits.

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other busi-

ness, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(3) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) Notwithstanding any other provisions of this § 18–15.205–6, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government contracts, are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph (4) unless:

(i) The contractor has been permitted an opportunity to justify the costs; and

(ii) Due consideration has been given to whether unusual conditions pertain to the Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(5) In addition to the general requirements set forth in subparagraphs (1) through (4) of this paragraph, certain forms of compensation are subject to further requirements as specified in paragraphs (b) through (i) of this section.

(b) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, premiums for overtime, extra-pay shifts, and multi-shift work are allowable to the extent approved pursuant to § 18–12.102.

(c) *Cash bonuses and incentive compensation.* Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment (but see § 18–15.107). Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in paragraph (f) of this section.

(d) *Bonuses and incentive compensation paid in stock.* Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in paragraph (c) of this section (including the incorporation of the principles of paragraph (f) of this section for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are subject to adjustment according to the principles set forth in paragraph (f)(3) of this section (but see § 18–15.107).

(e) *Stock options.* The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred compensation.* (1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonus, and profit-sharing plans; (2) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans; and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that (1) except for past service pension and retirement costs, it is for services rendered during the contract period; (2) it is, together with all other compensation paid to the employee, reasonable in amount; (3) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (4) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service (but see § 18–15.107).

(3) In determining the cost of deferred compensation allowable under the contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that his contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within subparagraph (i) of this paragraph, may be made the subject of agreement between the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(g) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to his employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance pay.* See § 18–15.205–39.

(i) *Training and education expenses.* See § 18–15.205–44.

(j) *Location allowances.* "Location allowances," sometimes called "supplemental pay" or "incentive pay," are allowable to the extent consistent with 32 CFR 12.105.

§ 18–15.205–7 Contingencies.

(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been

incurred and recorded on the contractor's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as, for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work; in such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed, in order to facilitate the negotiation of appropriate contractual coverage. (See, for example, §§ 18–15.205–16, 18–15.205–20, and 18–15.205–39.)

§ 18–15.205–8 Contributions and donations.

Contributions and donations are unallowable.

§ 18–15.205–9 Depreciation.

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular contractor's operations as distinguished from physical life.

(b) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable element of contract cost: *Provided*, That the amount thereof is computed:

(1) Upon the property cost basis used by the contractor for Federal income tax purposes (see Section 167 of the Internal Revenue Code of 1954); or

(2) In the case of nonprofit or tax-exempt organizations, upon a property cost basis which could have been used by the contractor for Federal income tax purposes, had such organizations been subject to the payment of income tax; and, in either case,

(3) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954, as amended, including:

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in subdivision (i) of this subparagraph;

(iii) The sum of the years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subdivision (ii) of this subparagraph.

(c) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives set forth in paragraph (a) of this section, vary with volume of production or use of multishift operations.

(d) In the case of emergency facilities covered by certificates of necessity, a contractor may elect to use normal depreciation without requesting a determination of "true depreciation" or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board. The method elected must be followed consistently throughout the life of the emergency facility. Where an election is made to use normal depreciation, the amount thereof for both the emergency period and the post-emergency period shall be computed in accordance with paragraph (b) of this section. Where an election is made to use "true depreciation," the amount allowable as depreciation:

(1) With respect to the emergency period (5 years), shall be computed in accordance with the determination of the Emergency Facilities Depreciation Board and allocated ratably over the full 5-year emergency period: *Provided*, No other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(2) After the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life (but see paragraph (e) of this section): *Provided*, The remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(e) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

(f) No depreciation, rental, or use charge shall be allowed on the contractor's assets which have been fully depreciated when a substantial portion of such depreciation was on a basis that represented, in effect, a recovery thereof as a charge against Government contracts or subcontracts. Otherwise, a reasonable use charge may be agreed upon and allowed (but see § 18–15.107). In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, and effect of any increased maintenance charges or decreased efficiency due to age.

§ 18–15.205–10 Employee morale, health, and welfare costs and credits.

Reasonable costs of health and welfare activities, such as house publications, health or first aid clinics, recreational activities, and employee counseling services, incurred, in accordance with the contractor's established practice or custom in the industry or area, for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities shall be credited to the costs thereof unless such income has been irrevocably set over to employee welfare organizations.

§ 18–15.205–11 Entertainment costs.

Costs of amusement, diversion, social activities, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see §§ 18–15.205–10 and 18–15.205–43).

§ 18–15.205–12 Excess facility costs.

Costs of maintaining, repairing, and housing idle and excess contractor-owned facilities, except those reasonably necessary for standby purposes, are unallowable. Costs of excess plant capacity reserved for defense mobilization production are generally unallowable on a NASA contract, since they should be covered by a separate contract with the Department of Defense.

§ 18–15.205–13 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

§ 18–15.205–14 Food service and dormitory costs and credits.

Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities. Reasonable losses from the operation of such services are allowable if they are allocated to all activities served. Profits (except profits irrevocably set over to an employee welfare organization of the contractor in amounts reasonably useful for the benefit of the employees at the site or sites of contract performance) accruing to the contractor from the operation of these services, whether operated by the contractor or by a concessionaire, shall be treated as a credit and allocated to all activities served.

§ 18–15.205–15 Fringe benefits.

See § 18–15.205–6(g).

§ 18–15.205–16 Insurance and indemnification.

(a) Insurance includes insurance which the contractor is required to carry, or which is approved, under the terms of the contract; and any other insurance which the contractor maintains in connection with the general conduct of his business.

(1) Costs of insurance require or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who has supervision or direction of (*a*) all or substantially all of the contractor's business, or (*b*) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (*c*) a separate and complete industrial operation in connection with the performance of the contract;

(iv) Provisions for a reserve under an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(v) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see § 18–15.205–6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the contract except:

(i) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(ii) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(b) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent expressly provided for in the contract, except as provided in paragraph (a)(3) of this section.

§ 18–15.205–17 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing operations, legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in § 18–15.205–41 (but see § 18–15.205–24).

§ 18–15.205–18 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and his employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

§ 18–15.205–19 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research and development, or other nature, is unallowable.

§ 18–15.205–20 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see § 18–15.205–9):

(1) Normal maintenance and repair costs are allowable; and

(2) Extraordinary maintenance and repair costs are allowable; provided such are allocated to the periods to which applicable for purposes of determining contract costs (but see § 18–15.107).

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

§ 18–15.205–21 Manufacturing and production engineering costs.

Costs of manufacturing and production engineering, including engineering activities in connection with the following, are allowable:

(a) Current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(b) Current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

§ 18–15.205–22 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and in-transit insurance. In computing material costs, consideration will be given to reasonable overruns, spoilage, or defective work (concerning correction of defective work, see the provisions of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of paragraphs (b) through (e) of this section.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Charges for materials, services, and supplies sold or transferred between plants, divisions, or organizations, under a common control, ordinarily shall be allowable to the extent of the lower of cost to the transferor or current market price. However, a departure from this basis is permissible where (1) the item is regularly manufactured and sold by the contractor through commercial channels, and (2) it is the contractor's long-established practice to price inter-organizational transfers at other than cost for commercial work: *Provided*, That the charge to the contract is not in excess of the transferor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 18–15.205–23 Organization costs.

Expenditures, such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and or-

ganizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable.

§ 18–15.205–24 Other business expenses.

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental cost of directors' and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

§ 18–15.205–25 Overtime, extra-pay shift, and multishift premiums.

Premiums for overtime, extra-pay shifts, and multishift work are allowable to the extent approved pursuant to § 18–12.102.

§ 18–15.205–26 Patent costs.

Costs of preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the contract relating to patents, costs of preparing documents and any other patent costs in connection with the filing of a patent application where title is conveyed to the Government are allowable (see § 18–15.205–36).

§ 18–15.205–27 Pension plans.

See § 18–15.205–6.

§ 18–15.205–28 Plant protection costs.

Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements, are allowable.

§ 18–15.205–29 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the NASA contract work, fair wear and tear excepted. Reconversion costs are allowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

§ 18—15.205—30 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract and to the extent authorized by the contracting officer (see §§ 18–7.205–52, 18–7.404–52, and 18–7.453–52).

§ 18–15.205–31 Professional service costs—legal, accounting, engineering, and other.

(a) Costs of professional services rendered by the members of a particular profession who are not employees of the contractor are allowable, subject to (b) and (c) below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see § 18–15.205–23).

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(2) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(3) The nature and scope of managerial services expected of the contractor's own organizations; and

(4) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(c) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract.

§ 18–15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets.

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing contract costs (but see § 18–15.205–9(b) as to basis for depreciation).

§ 18–15.205–33 Recruitment and relocation costs.

(a) *Recruitment costs.* (1) Subject to the provisions of subparagraphs (2) and (3) of this paragraph and provided that the size of the staff recruited and maintained is in keeping with work-load requirements, costs of help wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(2) In publications, costs of help wanted advertising that (i) includes color, (ii) includes advertising material for other than recruitment purposes, or (iii) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(3) Costs of (i) help wanted advertising and (ii) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another contractor, or in excess of the standard practices in the industry, are unallowable.

(b) *Employee relocation costs.* (1) Employee relocation costs, for the purpose of this Subpart 18–15.2, are those expenses of employees reimbursed by the contractor which are associated with a permanent change in duty assignment, whether incurred in conjunction with the transfer of existing employees or the movement of new hires. NASA considers that the customary industry tendency is to treat a transfer which is in excess of 12 months duration as a "permanent change in duty assignment." Employee relocation costs are allowable as indirect charges to the extent allocable and reasonable under the limitations and procedures established in § 18–15.205–33(b). Direct charging of these costs is authorized in special circumstances in accordance with subparagraph (3) of this paragraph. Retransfer costs are unallowable) i.e., a NASA contract should not normally bear both the cost of transferring an employee to a new location and the cost of returning an employee to his "home" site or some other gaining activity), although it is recognized that special circumstances, e.g., an abrupt termination, may justify acceptance of some portion of the costs associated with retransfer.

(2) Allowable relocation costs are limited to those reimbursed expenses incurred in relocating which are directly and commonly associated with relocation. NASA does not allow such costs when they (i) are an additional form of compensation, (ii) are designed to improve an employee's living standards, or (iii) are reimbursement for purely personal expenses incurred for the employee's pleasure or convenience. In addition, relocation costs should generally be reimbursed by a contractor only under an established company policy, as described in subparagraph (4) of this paragraph; whenever practicable such costs

should be made subject to an advance understanding (see § 18–15.107) in accordance with subparagraph (5) of this paragraph; and the allowability of the costs for specific categories of expenses associated with relocation is limited, in accordance with paragraph (6) of this paragraph. Further, contractors are expected to tap the personnel resources of the area in which the contract work is being performed to the fullest extent feasible consistent with the company's overall personnel policy and to the extent that contractual performance will not thereby be adversely affected.

(3) Indirect charging of relocation costs is generally required, since the permanent relocation of employees occurs as part of the company's overall management operations and it is reasonable to assume that employees involved in a permanent relocation will continue in the company's employ. However, in special circumstances, certain relocation costs may be recognized as a direct charge, where, for example, they are specifically related to the performance under a NASA contract and incurred because of request of NASA: *Provided,* In all cases, that direct charging is consistent with the contractor's and generally accepted accounting practices and that like costs applicable to other work of the contractor are eliminated from the indirect costs allocated to Government work (see §§ 18–15.201–4 and 18–15.201–5).

(4) Generally, the application of relocation costs to NASA contracts should be pursuant to an established company policy which specifies the particular relocation expenses the contractor will reimburse. The company policy must provide for consistent treatment of company employees but may appropriately recognize that expenses may reasonably differ among the various levels of employees. The company should also have adequate internal controls to assure compliance with its policy.

(5) The wide diversity of relocation costs and the difficulties involved in determining their reasonableness make it particularly desirable to arrive at advance understandings with contractors (see § 18–15.107). Such advance understandings will generally be of two types: an agreeement which sets forth the extent to which NASA will recognize costs under the contractor's general relocation policies; and where applicable, an agreement governing the allowability of costs which result from mass movements or special requirements in connection with a particular contract. Such advance agreements should include, but are not necessarily to be limited to (i) an enumeration of those categories of expenses which will be recognized as allowable and those to be disallowed; (ii) in accordance with subparagraph (7) of this paragraph, a dollar limitation for each category of expense or, in lieu thereof, limitations which have the indirect effect of establishing dollar ceilings on specific relocation actions; (iii) reference to a procedure for approving expenses and for validation of expenses incurred; (iv) a listing of the categories of employees to whom the policy is to be applicable; and (v) an indication as to whether the expense is to a direct charge to a contract, or, in accordance with subparagraph (3) of this paragraph, an indirect charge. All proposed advance understandings shall be submitted to the Director of Procurement for approval in order to ensure consistency of approach among the NASA installations.

(6) Company policies, though subject to wide variation, generally cover payment of expenses which may be categorized as pre-moving, moving, post-moving, and dislocation expenses which do not readily fit into any of these categories.

(i) Pre-moving expenditures may include such items as:

(*a*) Visits by the employee and his spouse to seek new quarters prior to the moving date and associated incidental expenses such as for baby sitters, care of house pets, and phone calls;

(*b*) Establishment of temporary quarters prior to effecting a permanent move;

(*c*) Visits and calls home where an employee reports alone prior to moving other members of the household; and

(*d*) Expenses incident to disposition of housing, such as costs of canceling an unexpired lease, brokerage and legal fees, etc., and the loss that may result from the price at which the home is sold.

Costs incident to (*a*) and (*b*) of this subdivision are allowable to the extent reasonable and allocable. Costs incident to (*c*) of this subdivision are normally unallowable but exceptions may be recognized in special circumstances (e.g., in the event of unreasonably long separations when the established company policy provides for such calls and visits). Costs incident to (*d*) of this subdivision are unallowable, except for realtors' commissions incurred in the sale of a transferred employee's home.

(ii) Moving expenditures may include transportation of the employee and members of his household (including house pets), meals and lodging en route to the new location, packing, transportation of household and other effects, storage, and insurance. Such costs are allowable to the extent they are reasonable and allocable.

(iii) Post-moving expenditures may include:

(*a*) Losses incurred on theft or damage during move;

(*b*) Closing costs on purchase of new home; and

(*c*) Automobile owner's expense, such as registration and other expenses incurred by transfer to a new location.

Costs incident to (*a*) of this subdivision are allowable if not covered by insurance. Costs incident to (*b*) of this subdivision are unallowable. Costs incident to (*c*) of this subdivision are allowable.

(iv) Dislocation expenses may include:

(a) Removing carpets and drapes at the previous location and reinstalling at the new location;

(b) Disconnecting and reconnecting appliances and television;

(c) Prepaid fees on unexpired medical and dental plans, food locker contracts, and other miscellaneous but normal out-of-pocket expenses.

These expenses, exclusive of cleaning carpets or drapes, are allowable to the extent they are reasonable and allocable but only if they are incurred by existing employees rather than newly hired workers.

(7) Evaluation of the proposed application of a given company plan may result in the delineation of three questionable categories of expenses: (i) those which are clearly unallowable; (ii) those which may be normally allowable but are not appropriate for reimbursement under the specific circumstances; and (iii) those considered allowable but as to which the amount of reimbursement claimed may be excessive. Such an evaluation may indicate the desirability of establishing a ceiling to limit the amount of expenses in each category which will be reimbursed to the contractor. The ceiling may, as appropriate, be established indirectly by limitations on specific actions.

(8) Contractors shall be required to refund payments made by the Government in reimbursement for employee relocation costs if employment is terminated voluntarily by the employee or by virtue of discharge for cause within 12 months after appointment or transfer.

§ 18–15.205–34 Rental costs (including sale and leaseback of facilities).

(a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve, among other considerations, comparison of rental costs with the amount which the contractor would have received had he owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance; *Provided,* That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the contract, rental costs specified in sale and leaseback agreements, incurred by contractors through selling plant facilities to investment organizations, such as insurance companies, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the contractor would have received had he retained legal title to the facilities.

(d) The allowability of rental costs under unexpired leases in connection with terminations is treated in § 18–15.205–42(e).

§ 18–15.205–35 Research and development costs.

(a) Basic research, for the purpose of § 18–15.2, is that type of research which is directed toward increase of knowledge in science. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this § 18–15.2, consists of that type of effort which (1) normally follows basic research, but may not be severable from the related basic research; (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques; and (3) attempts to "advance the state of the art." Applied research does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as hereinafter provided.

(b) Development is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(c) A contractor's independent research and development is that research and development which is not sponsored by a contract, grant, or other arrangement.

(d) An unsolicited proposal is a written offer to perform work which does not result from a formal written request for proposals issued by NASA.

(e) Except under a contract for research awarded in response to an unsolicited proposal, a contractor's costs of independent research as defined in paragraphs (a) and (c) of this section shall be allowable as indirect costs (subject to the provisions of § 18–15.205–35): *Provided,* They are allocated to all work of the contractor. A contractor's costs of independent research are unallowable under any contract for research awarded in response to an unsolicited proposal (see paragraph (j) of this section).

(f) Except under a contract for research awarded in response to an unsolicted proposal, costs of a contractor's independent development, as defined in paragraphs (b) and (c) of this section (and subject to the provisions of this section § 18–15.205–35), are allowable to the extent that such development is related to the product lines for which the Government has contracts: *Provided,* The costs are reasonable in amount and are allocated as indirect costs to all work of the contractor on such product lines. In cases where a contractor's normal course of business does not involve production work, the cost of independent development is allowable (except under a contract for research awarded in response to an unsolicited proposal) to the extent that such development is related and allocated as an indirect cost to the field of effort of Government research and development contracts. A contractor's costs of independent development are unallowable under any contract for research awarded in response to an unsolicited proposal (see paragraph (j) of this section).

(g) Independent research and development costs shall include an amount for the absorption of their appropriate share of indirect and administrative costs, unless the contractor, in accordance with his accounting practices consistently applied, treats such costs otherwise.

(h) Research and development costs (including amounts capitalized), regardless of their nature, which were incurred in accounting periods prior to the award of a particular contract, are unallowable except where allowable as precontract costs (see § 18–15.205–30).

(i) The reasonableness of expenditures for independent research and development when otherwise allowable in accordance with the provisions of § 18–15.205–35 should be determined in light of all pertinent considerations, such as previous contractor research and development activity, cost of past programs, and changes in science and technology. Such expenditures should be pursuant to a broad planned program, which is reasonable in scope and well managed. Such expenditures (especially for development) should be scrutinized with great care in connection with contractors whose work is predominantly or substantially with the Government. Advance agreements as described in § 18–15.107 are particularly important in this situation. In recognition that cost sharing of the contractor's independent research and development program may provide motivation for more efficient accomplishment of such program, it is desirable in some cases that the Government bear less than an allocable share of the total cost of the program. Under these circumstances, the following are among the approaches which may be used as the basis for agreement:

(1) Review of the contractor's proposed independent research and development program and agreement to accept the allocable costs of specific projects;

(2) Agreement on a maximum dollar limitation of costs, an allocable portion of which will be accepted by the Government; and

(3) An agreement to accept the allocable share of a percentage of the contractor's planned research and development program.

(j) Independent research and development costs are not allowable in research contracts which (1) result from unsolicited proposals and (2) are placed with commercial organizations or nonprofit institutions (other than educational institutions). Each contract awarded on the basis of an unsolicited proposal shall be considered as a contract for research unless otherwise stated in the contract that the contract is for development work or work other than research.

§ 18–15.205–36 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of acquiring by purchase a patent or rights thereto, necessary for the proper performance of the contract and applicable to contract products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent has expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the contractor;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the contract.

(c) In any case involving a patent formerly owned by the contractor, the amount of royalty allowed should not exceed the cost which would have been allowed had the contractor retained title thereto.

(d) See § 18–15.107 regarding advance understandings.

§ 18–15.205–37 Selling costs.

(a) Sellings costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see §§ 18–15.107 and 18–15.205–1). Allocability of selling costs will be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use.

(c) Notwithstanding paragraph (b) of this section, salesmen's or agents' compensation, fees, commissions, percentages, or brokerage fees, which are contingent upon the award of contracts, are allowable only when paid to bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 18–15.205–38 Service and warranty costs.

Such costs include those arising from fulfillment of any contractual obligation of a contractor to provide services, such an installation, training, correcting defects in the products, replacing defective parts, making refunds in the case of inadequate performance, etc.

When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

§ 18–15.205–39 Severance pay.

(a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (4) circumstance of the particular employment.

(b) Cost of severance payments is divided into two categories, as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances, such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

§ 18–15.205–40 Special tooling costs.

The term "special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include (a) items of tooling or equipment acquired by the contractor prior to the contract, replacements thereof, whether or not altered or adapted for use in the performance of the contract, (b) consumable small tools, or (c) general or special machine tools, or similar capital items. The cost of special tooling, when it is acquired for and its usefulness is limited to one or more Government contracts, is allowable and shall be allocated to the specific Government contract or contracts for which acquired.

§ 18–15.205–41 Taxes.

(a) Taxes are charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes) which the contractor is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income and excess profits taxes;

(2) Taxes in connection with financing, refinancing, or refunding operations (see § 18–15.205–17);

(3) Taxes from which exemptions are available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work in process which is used solely in connection with non-Government work should be allocated to such work, and taxes on contractor-owned work-in-process inventory, and Government-owned work-in-process inventory when taxed, used solely in connection with Government work, should be charged to such work.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable: *Provided,* That the contractor prior to payment of such taxes:

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (i) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment or (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to assure timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government: *Provided,* Any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

§ 18–15.205–42 Termination costs.

Contract terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the contract not been terminated. Cost principles covering these items are set forth in this § 18–15.205–42. They are to be used in conjunction with this Subpart 18–15.2 in termination situations.

(a) Common items: The cost of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that he could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the contractor, the contracting officer should consider the contractor's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) Costs continuing after termination. If, in a particular case, despite all reasonable efforts by the contractor, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Subpart, except that any such costs continuing after termination due to the negligent or willful failure of the contractor to discontinue such costs shall be considered unallowable.

(c) Initial costs, including starting load and preparatory costs, are allowable, subject to the conditions in subparagraphs (1) through (6) of this paragraph.

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of production and not fully absorbed because of the termination. Such costs may include the cost of labor and material, and related overhead attributable to such factors as:

(i) Excessive spoilage resulting from inexperienced labor;

(ii) Idle time and subnormal production occasioned by testing and changing methods of processing;

(iii) Employee training; and

(iv) Unfamiliarity or lack of experience with the product, materials, manufacturing processes, and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated contract including costs of initial plant rearrangement and alterations, management and personnel organization, production planning, and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one contract shall not be allocated to other contracts.

(d) Loss of useful value of special tooling, special machinery, and equipment in general allowable: *Provided:*

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the contractor;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery, and equipment was acquired.

(e) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property: *Provided,* Such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) Settlement expenses, including the following, are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(i) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract; and

(ii) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(g) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor, are generally allowable.

§ 18–15.205–43 Trade, business, technical, and professional activity costs.

(a) *Memberships.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes costs of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

§ 18–15.205–44 Training and educational costs.

(a) Costs of preparation and maintenance of a program of instruction at noncollege level, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (1) salaries of the director of training and staff when the training program is conducted by the contractor, or (2) tuition and fees when the training is in an institution not operated by the contractor, are allowable.

(b) Costs of part-time education, at an undergraduate or postgraduate college level, related to the job requirements of bona fide employees, including only (1) training materials; (2) textbooks; (3) fees charged by the educational institution; (4) tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and (5) straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours, are allowable.

(c) Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time scientific and engineering education at a postgraduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed one school year for each employee so trained, are allowable. In unusual cases where required by military technology, the period may be extended.

(d) Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable to the extent set forth in §§ 18–15.205–20, 18–15.205–9, and 18–15.205–34, respectively.

(e) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

§ 18–15.205–45 Transportation costs.

Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see § 18–15.205–22). Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

§ 18–15.205–46 Travel costs.

(a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two: *Provided,* The method used does not result in an unreasonable charge.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing (see § 18–15.202).

(e) Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to the policy with respect to relocation costs set forth in § 18–15.205–33(b).

(f) The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class accommodations are not reasonably available to meet necessary requirements, such as, where less than first-class accommodations would:

(1) Require circuitous routing,

(2) Require travel during unreasonable hours,

(3) Greatly increase the duration of the flight,

(4) Result in additional costs which would offset the transportation savings,

(5) Offer accommodations which are not reasonably adequate for the physical or medical needs of the traveler.

§ 18–15.205–47 Economic planning costs.

(a) This category includes costs of generalized long-range management planning which is concerned with the future overall development of the contractor's business and which may take into account the eventual possibility of economic dislocations of fundamental alterations in those markets in which the contractor currently does business.

(b) Economic planning costs are allowable as indirect costs to be properly allocated. Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this provision.

Subpart 18–15.3—Research Contracts With Educational Institutions

§ 18–15.301 General.

(a) It is the intent of these principles to provide NASA and educational institutions with a common basis for determining the allowable costs of research sponsored by the Federal Government. Application of these principles should enable such agencies and institutions to identify the allowable direct costs of such research, plus the allocable portion of the allowable indirect costs, less applicable credits. The tests of allowability of costs applied in these principles are reasonableness and allocability under consistently applied, generally accepted cost accounting principles and practices; however, these provisions are subject to any limitations as to types or amounts of costs set forth in the research agreement.

(b) These principles do not attempt to identify the circumstances or dictate the extent of NASA and institution participation in the financing of a particular research and development project, but rather are confined to the subject of cost determination. Arrangements concerning financial participation are properly the subject of negotiation between the contracting officer and the educational institution concerned.

(c) These principles should be applied to all NASA-sponsored research at an educational institution, including research conducted at locations other than the main campus of the institution.

(d) A negotiated fixed amount in lieu of indirect costs may be appropriate in certain instances for off-campus or segregated research projects where (1) research agreements are charged directly for the cost of many of their administrative or housekeeping services, (2) the cost of benefits derived from an institution's indirect services cannot be readily determined by use of apportionment or allocation bases normally employed, or (3) the costs of apportioning and allocating expenses to research agreements are excessive. The negotiated amount should not exceed a conservative estimate of anticipated indirect costs.

§ 18–15.302 Definitions.

As used in this Subpart 18–15.3, the following terms have the meanings stated in this section.

§ 18–15.302–1 Research agreements.

Research agreements are agreements to perform Federally sponsored research through grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

§ 18–15.302–2 Apportionment.

Apportionment is the process by which the indirect costs of the institution are assigned to (i) instruction and research, and (ii) other institutional activities.

§ 18–15.302–3 Allocation.

Allocation is the process by which the indirect costs apportioned to instruction and research are distributed to research agreements.

§ 18–15.302–4 Sponsoring agency.

Sponsoring agency means the Federal agency for which the institution is performing research. Its use in this document does not imply a change in concept or intent for those agencies that have traditionally used a grant rather than a contractual instrument.

§ 18–15.302–5 Original complement.

Original complement means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings. If a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement.

§ 18–15.302–6 Other institutional activities.

Other institutional activities means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, financial campaigns, and other similar activities or auxiliary enterprises. Also included under this definition is any category of cost treated as "unallowable": *Provided*, Such category of cost identifies a function or activity to which a portion of the institution's general overhead expenses are properly allocable.

§ 18–15.303 Direct costs.

Direct costs are those identified as having been specifically incurred to perform a particular research agreement. The general types of direct costs are as follows:

(a) Direct salaries and wages, including employee benefit expenses and pension plan costs (see § 18–15.307) to the extent that they are consistently treated by the educational institution as a direct rather than an indirect cost, are those applicable directly to the performance of a research agreement. Such salaries and wages should be charged at the actual rates paid by the institution. Where professional staff paid on a salary basis work directly part time on a research agreement, current and reasonable estimates of time spent may be used in the absence of actual time records.

(b) Direct material costs include raw materials, purchased or supplied from stock, which are directly consumed or expended in the performance of a research agreement, or are otherwise applicable directly to a research agreement.

(c) Other direct costs include other expenses related directly to a particular research agreement or project, including abnormal utility consumption. This may include services purchased from institution service operations: *Provided*, Such are consistently treated as direct rather than indirect costs and are priced under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution. Purchases of equipment will be included under this heading only to the extent expressly provided for in the research agreement or approved pursuant to such agreement.

§ 18–15.304 Indirect costs.

Indirect costs are those which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs of research agreements or other activities. The general types of indirect costs are as follows:

(a) General administration and general expenses are those incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any specific division of the institution. Employee benefit expenses and pension plan costs may be included in this category to the extent that they are consistently treated by the educational institution as an indirect rather than a direct cost.

(b) Research administration expenses are those which apply to research administered in whole or in part by a separate organization or an identifiable administrative unit. Examples of work relating to research which is sometimes performed under such organizational arrangement are contract administration, security, purchasing, personnel administration, and editing and publishing of research data.

(c) Operation and maintenance expenses are those incurred for operating and maintaining the institution's physical plant. They include expenses normally incurred by the institution for administration or supervision of the physical plant; janitorial service; repairs and ordinary or normal alterations of buildings, furniture, and equipment; care and maintenance of grounds; utilities; and other expenses customarily associated with the operation, maintenance, preservation, and protection of the physical plant.

(d) Library expenses are those incurred for direct operation of the library plus a use allowance for library books. The use allowance shall not exceed 8 cents per volume per year.

(e) Use allowance is a means of compensation for the use of buildings, capital improvements, and equipment over and above the expenses for operation and maintenance when depreciation or other equivalent costs are not considered. The use allowance for buildings and improvements shall be computed at an annual rate not to exceed two percent (2%) of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent (6⅔%) of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance shall be computed at an annual rate not exceeding 10 percent (10%) of such cost. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent (6⅔%) of such estimate. Computation of the use allowance shall exclude the portion of the cost of buildings and equipment paid for out of Federal funds and the cost of grounds.

(f) Indirect department expenses are those incurred for departmental administration, such as salaries of deans or heads of colleges, schools, departments, or divisions, and related secretarial and other administrative expenses.

§ 18–15.305 Applicable costs.

(a) The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits.

(b) When any types of expense ordinarily treated as indirect costs are charged to a research agreement as direct costs, the costs of similar items applicable to other activities of the institution must be eliminated from indirect costs allocable to the research agreement.

(c) Where a particular understanding has been reached regarding specific items of cost to be reimbursed, the research agreement should clearly state such understanding.

(d) In determining the allowability of certain items of cost, § 18–15.307 provides standards to be applied and also identifies certain types of expenditures which relate solely to instruction; such costs of instruction, including applicable overhead, do not enter into the costs of research agreements as either direct costs or indirect costs.

§ 18–15.306 Determination of indirect costs.

§ 18–15.306–1 General.

(a) In determining the indirect costs applicable to NASA-sponsored research agreements, the allowable indirect costs should first be apportioned equitably between (1) instruction and research activity and (2) other institutional activities, as provided in § 18–15.306–2.

(b) The amounts of indirect costs apportioned to instruction and research should then be allocated in an equitable manner to research agreements, as provided in § 18–15.306–3.

(c) Actual conditions must be taken into account in determining the most suitable method or methods to be used in the apportionment and allocation of indirect costs. The objectives should be the selection of a method or methods which will distribute the indirect costs in a fair and equitable manner to the Government research and development work and other work of the institution, giving due consideration to the nature and extent of the use of the institution's facilities by research personnel, academic staff, students, and other personnel or activities, and to the materiality of the amounts involved. The methods used should conform with generally accepted cost accounting practices, provide uniformity of treatment for like cost elements, be applied consistently, and produce equitable results. Any significant change, such as in the nature or extent of Government work or other activities sponsored or conducted by the institution, may require reconsideration of the methods previously in use to determine whether they continue to be equitable.

§ 18–15.306–2 Apportionment.

Indirect costs shall be apportioned as between instruction and research activities, and other institutional activities as defined in § 18–15.302–6. The apportionment shall be made as follows:

(a) General administration and general expenses, on the basis of total expenditures (exclusive of capital expenditures and use allowances), direct salaries and wages, or other bases appropriate in the circumstances; and

(b) Operation and maintenance of the physical plant, if not separately costed, on the basis of total square or cubic footage of the buildings.

Other types of indirect costs normally do not require apportionment; where they do, an equitable basis for making the apportionment should be selected.

§ 18–15.306–3 Allocation.

(a) After determination of the total amount of indirect costs applicable to instruction and research activities, such indirect costs shall in turn be allocated between instruction activities and research agreements as described in paragraphs (b), (c), (d), and (e) of this section.

(b) The following criteria should be used with such appropriate modifications as will under the circumstances produce reasonably equitable allocation of the indirect costs associated with research agreements:

(1) General administration and general expenses should normally be allocated on the basis of total expenditures (exclusive of capital expenditures and use allowances) if equitable, direct salaries and wages, or other bases appropriate in the circumstances;

(2) Research administration expenses should be allocated to (i) applicable research agreements and (ii) other research benefiting therefrom on the basis of records reflecting the proportion fairly applicable to each, or, in the absence of such records, on the basis of a reasonable estimate;

(3) Operation and maintenance expenses should be allocated on a basis that gives primary emphasis to space utilization. The amount allocated may be developed as follows—

(i) Where actual space and related cost records are or can readily be maintained without significant change in the accounting practices, the amount allocated to research agreements should be based on such data;

(ii) Where the space and related cost records maintained are not sufficient for purposes of subdivision (i) of this subparagraph, a reasonable estimate of the proportion of total space assigned to research agreements normally will suffice, and this proportion of operation and maintenance expense should be allocated to research agreements. Where it can be established that the cost of maintaining space assigned to research varies significantly from the cost of maintaining other space, appropriate weighting factors may be used to give effect to such variations;

(iii) Where more definitive information is not available, either of the following simplified techniques for determining space may be used, as most appropriate—

(*a*) Reduce the total space identified with instruction and research by the amount of space occupied by undergraduate students, including appropriate portions of classrooms and access and related space. Reduce by the same proportion the amount of maintenance and operation expense that has been apportioned to instruction and research, and then allocate to research agreements on the basis of the relationship that direct salaries and wages of research agreements bears to direct salaries and wages of instruction and research; or

(*b*) Prepare a reasonable estimate of the average gross space assigned per research worker, and extend to the equivalent annual number of research workers under research agreements. The resulting product should then be related to total space assigned to instruction and research in order to obtain the proportion of space utilized for research agreements. The resulting proportion should then be applied to operation and maintenance expense to obtain the amount allocable to research agreements; or

(*c*) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities

by research personnel and others, including students;

(4) Library expenses should normally be allocated to research agreements on the basis of population, including students and other users. Where appropriate, consideration may be given to weighting segments of the population figures as necessary to produce equitable results;

(5) Use allowance for buildings and equipment should, if depreciation or other equivalent costs are not considered, be computed in accordance with § 18–15.304(e). The cost of buildings and equipment used by "other institutional activities" (as defined in § 18–15.302–6) should be excluded from any computation of use allowances. If available records permit, use allowances may be specifically allocated in whole or in part to research agreements. In the absence of such usable records, use allowance may be allocated to research agreements on the same basis as that used for allocating operation and maintenance expenses; and

(6) Indirect departmental expenses, as defined in § 18–15.304(f), which jointly benefit both research agreements and other activities, should be allocated between research agreements administered or supervised by the department and other work of the department on any equitable basis, possibly direct salaries and wages, total direct expenditures, or approximate time so devoted. Where equitable results would be obtained, the distribution may be made on a composite base which would include all schools and departments.

(c) Indirect costs allocated to research agreements normally should be treated as a common pool. The costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis. This rate will be the percentage which the indirect cost pool is of direct salaries and wages of the applicable research agreements. If appropriate, total direct expenditures may be used rather than salaries and wages.

(d) It is recognized that in certain cases, due to the nature of the work, the facilities or personnel involved, or other considerations, the application of a single indirect expense rate on research agreements may produce inequitable results to the institution or to the Government. In such cases, it may be necessary to develop two or more indirect expense rates by means of (1) appropriate adjustment to the basic indirect expense rate developed through use of the common pool, or (2) segregation of the indirect expenses allocated to research agreements into two or more indirect expense pools. In the latter case, the costs in each such pool will be distributed to the specific research agreements benefiting therefrom on the basis of direct wages and salaries or total direct expenditures, as appropriate. Examples of conditions which may justify the development of two or more pools of indirect expense are:

(1) Where the nature of a particular type of overhead cost requires a different basis of allocation to produce equitable results;

(2) Where a research agreement or group of agreements or the facility in which such agreement(s) is performed provides its own services to a significant degree, as may be in the case of a hospital or a segregated or off-campus facility;

(3) Where a research agreement requires significantly different degrees of indirect services from the institution. For example, such conditions may exist where (i) significant amounts of Government-owned facilities or equipment are provided in lieu of that normally furnished by the institution, (ii) a research agreement requires an unusual amount of power or other utilities, (iii) the cost of a special library provided in lieu of regular library services is reimbursed by the Government, or (iv) construction constitutes a significant portion of the work; and

(4) Where it is appropriate to associate certain costs more directly with the activities benefited, such as where the research work is performed on one campus of a multicampus university.

(e) Where research is separately administered, in whole or in part, or separate services are provided in lieu of those services normally provided by the institution, the cost of the normal institutional administration or other services replaced thereby shall be excluded from allocation to such research.

§ 18–15.306–4 Overhead determinations acceptable under special circumstances.

(a) Indirect costs may be claimed at a rate which is anticipated to be less than that which would otherwise be allowable, with provisions made in the research agreement for adjustment if actual costs subsequently proved to be less than the claimed rate.

(b) Where the total direct cost of Government-sponsored research and development work at an institution does not exceed $250,000 in a year, the use of the following abbreviated procedure may be acceptable in the determination of allowable indirect costs. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for dividing total expenditures (exclusive of expenditures for capital items and unallowable costs, as defined in § 18–15.307, and expenditures for student aid and for annuity payments) between expenditures applicable to the indirect expense pool, and all other expenditures. The indirect expense pool shall be limited to the following categories of expense:

(1) General administration and general expenses, inclusive of allocable salaries and expenses of deans of schools and department heads (where the allocable portion of the salaries and expenses of deans of schools and department heads is not available, a maximum of 20 percent of the total of such salaries and expenses may be included in the indirect expense pool);

(2) Operation and maintenance expenses; and

(3) Library operating expenses.

All categories of expense not specifically cited above will be grouped under "all other expenditures," including the expenses of research, education (including the items cited in § 18–15.307–2(a) and (c), and other institutional activities (as defined in § 18–15.302–6). The indirect expense rate will then be computed as the percentage relationship of the indirect expense pool to all other expenditures (as defined above). If the information required for this abbreviated procedure cannot be obtained from an analysis of the most recent annual financial report and immediately available supporting information, the regular procedure shall be used for the determination of indirect costs.

§ 18–15.307 General standards for selected items of cost.

§ 18–15.307–1 Purpose and applicability.

(a) Section 18–15.307 provides standards to be applied to the extent deemed practicable in determining the allowability of certain items of cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular cost in the standards should not imply that it is either allowable or unallowable; rather, determination as to allowability in such case should be based on the treatment or standards provided for similar or related items of cost.

(b) In case of discrepancy between the provisions of a specific research agreement and the applicable standards, the provisions of the research agreement should govern.

§ 18–15.307–2 Costs applicable to instruction.

Except as specifically noted, the following types of costs apply only to instruction and therefore do not enter into the costs of research agreements, either as direct costs or indirect costs, unless, notwithstanding § 18–15.305(d), specific provision is made therefor in the research agreement:

(a) Commencement and convocation costs;

(b) Scholarships, fellowships, tuition, and other forms of student aid costs (however, in certain cases such costs may be allocable in part to research agreements under the conditions set forth in § 18–15.307–3(b)); and

(c) Student services costs, including such activities as deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services. (However, in the case of students actually engaged in work under research agreements, a proportion of student service costs measured by the relationship between hours of work by students on such research work

and total student hours including all research time may be allowed as a part of research administration expenses.)

§ 18–15.307–3 Allowable and unallowable costs.

(a) Advertising costs include the cost of advertising media and related technical and administrative costs. Only the following advertising costs are allowable: (1) help wanted advertising, and (2) other advertising necessary for the performance of the research agreement to the extent authorized.

(b) Bad debts including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs are unallowable.

(c) Capital expenditures are unallowable except as provided for in the research agreement. This includes costs of books, equipment, and buildings, as well as repairs which materially increase the value or useful life of such equipment or buildings.

(d) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises, pursuant to suggestions or requirements of civil defense authorities, are allowable when apportioned to all activities of the institution. Capital expenditures for civil defense purposes shall not be allowed, but a use allowance may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

(e) Communication costs including telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

(f) Compensation for personal services: Each institution shall maintain control over its salary and wage rates according to its established policy consistently applied; *provided*, however, that the excess of salary and wage rates paid to personnel working on Government research agreements over salary and wage rates paid to personnel working on the institution's departmental research or other research will not be allowed unless specifically provided in the agreement or approved by the contracting officer. This principle does not prohibit the charging of the full salary of any temporary employee in whose favor a salary differential exists solely by virtue of the nature of his employment in accordance with the regular practice of the institution concerned. Faculty members shall be considered as employed for the period represented by the sum of all semesters and other periods during which they are required to work under the practice of the institution concerned. (Example: Professor of X institution is required to work 2 semesters of 4½ months each, or a total of 9 months out of the academic year. His compensation is $5,400. During the summer months, July, August, and September, he works full time on Government research projects in the institution laboratory. Unless the established practice of the institution relating to summer compensation, not based on Government contract experience, would result in a different computation, his compensation for that period, chargeable by the institution to the Government research agreement, will be $1,800, computed as follows: ($5,400÷9=$600; $600×3=$1,800).)

(g) Contingency provisions to provide for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

(h) Deans of faculty and graduate schools, or their equivalents, including their staffs and related expenses, are allowable.

(i) Employee morale, health, and welfare costs and credits, such as house publications, health or first aid clinics and/or infirmaries, recreational activities, and employees' counseling services, incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs shall be equitably apportioned to all activities of the institution. Income generated from any of these activities shall be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organization.

(j) Entertainment costs including costs of amusement, social activities, entertainment, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

(k) Equipment and other facilities: The cost of equipment or other facilities, including books purchased specifically for use on the project, are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

(l) Fines and penalties: Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the research agreement or instructions in writing from the contracting officer.

(m) Insurance and indemnification:

(1) Insurance includes those types of insurance which the institution is required to carry, or which is approved, under the terms of the research agreement, and any other insurance which the institution maintains in the general conduct of its activities. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise.

(2) Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

(3) Costs of other insurance maintained by the institution in connection with the general conduct of its activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage shall be in accordance with sound institutional practice;

(ii) Costs of insurance or of any contributions to any reserve covering the risk of loss or damage to Government-owned property are unallowable except to the extent that the Government shall have required or approved such costs;

(iii) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks;

(iv) Costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted; and

(v) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except (*a*) costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable; and (*b*) minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(n) Interest costs for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(o) Investment counsel and staff costs are unallowable.

(p) Labor relations costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

(q) Losses on other research agreements or contracts: Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for overhead.

(r) Maintenance and repair costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

(s) Material costs of purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement are allowable. Purchases made specifically for the research

agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

(t) Memberships, subscriptions, and professional activity costs:

(1) Membership costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

(2) Subscription costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable, excepting those obtained for the library, for which a use allowance is made.

(3) Meetings and conferences. This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information. Such costs are allowable.

(u) Patent costs: Costs of preparing disclosures, reports, and other documents required by the research agreement, and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable (see also paragraph (ff) of this section).

(v) Pension plan costs are allowable if in accordance with the established policies of the institution: *Provided*, Such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory: *And provided*, Appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

(w) Plant security costs, including wages, uniforms, and equipment of personnel engaged in plant protection, and necessary expenses to comply with Government security requirements, are allowable.

(x) Pre-research agreement costs are those which are incurred prior to the effective date of the research agreement whether or not they would have been allowable thereunder if incurred after such date. Such costs are unallowable unless specifically set forth and identified in the research agreement.

(y) Professional service costs—legal, accounting, engineering, and other.

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to subparagraphs (2) and (3) of this paragraph, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include:

(i) The past pattern of such costs, particularly in the years prior to the award of Government research agreements;

(ii) The impact of Government research agreements on the institution's total activity;

(iii) The nature and scope of managerial services expected of the institution's own organization; and

(iv) Whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

(3) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

(z) Profits and losses on disposition of plant, equipment, or capital assets: Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

(aa) Proposal costs are the costs of preparing bids or proposals on potential Government and non-Government research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution; and no proposal costs of past accounting periods shall be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

(bb) Public information services costs, such as news releases pertaining to specific research or scientific accomplishment, are unallowable unless specifically authorized by the sponsoring agency.

(cc) Rearrangement and alteration costs: Ordinary or normal rearrangement and alteration costs are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

(dd) Reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted. Reconversion costs are allowable only to the extent of the cost of removing Government property and the restoration or rehabilitation costs caused by such removal.

(ee) Recruiting costs such as help wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment, are allowable. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are also allowable. Costs of special benefits or emoluments offered to prospective employees beyond recognized practices for recruiting such personnel are unallowable.

(ff) Royalties and other costs for use of patents: Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless:

(i) The Government has a license or the right to free use of the patent;

(ii) The patent has been adjudicated to be invalid or has been administratively determined to be invalid;

(iii) The patent is considered to be unenforceable; or

(iv) The patent has expired.

(gg) Severance pay is a payment, in addition to regular salaries and wages, by institutions to employees whose services have been terminated. Severance pay is allowable as a cost only to the extent that it is required by law, employer-employee agreement, established policy that constitutes in effect an implied agreement on the institution's part, or circumstances of the particular employment. Severance payments are divided into two categories, as follows:

(i) Those due to normal, recurring turnover: The actual costs of such severance payments shall be regarded as expense applicable to the current fiscal year and equitably apportioned to the

institution's activities during that period; and

(ii) Those due to abnormal or mass terminations: Abnormal or mass severance pay is of such a conjectural nature that measurement of cost by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligaton to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(hh) Special services costs, such as general public relations activities, catalogs, and alumni activities, are unallowable.

(ii) Staff benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of such staff benefits are allowable and include vacations, holidays, sick leave, military leave, employee insurance, social security taxes, and workmen's compensation insurance. The payment of tuition or remission of tuition for employees and their families is allowable to the extent that such payments or remissions are made under established policies consistently applied.

(jj) Taxes: In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(ii) Special assessments on land which represent capital improvements.

Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon attributable to taxes, interest, or penalties which were allowed as research agreement costs, shall be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

(kk) Transportation costs: Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be direct costed as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

(ll) Travel costs:

(1) Travel costs consist of transportation, lodging, subsistence, and incidental expenses.

(2) Travel costs incurred by institution personnel in a travel status while on specific research business are allowable.

(3) Travel costs incurred in the normal course of overall administration of the institution and applicable to the entire institution are allowable. Such costs shall be equitably apportioned to all work of the institution.

(4) Subsistence and lodging, including tips or similar incidental costs, are allowable either on an actual or per diem basis. The basis selected shall apply to an entire trip and not selected days of the trip.

(5) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

(mm) Termination costs:

(1) Contract termination generally gives rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this subpart in the case of contract termination.

(2) The cost of common items of material reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(3) If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unacceptable.

(4) Loss of useful value of special tooling, and special machinery and equipment, is generally allowable, *Provided:*

(i) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(ii) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(iii) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery, and equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if:

(i) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(ii) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property: *Provided,* Such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for—

(*a*) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract; and

(*b*) The termination and settlement of subcontracts; and

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(7) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor, are generally allowable.

(nn) Sabbatical leave costs: Sabbatical leave costs, including leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable as indirect costs of the period in which paid: *Provided,* The institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs shall be allocated on an equitable basis among all appertaining activities of the institution.

Subpart 18–15.4—Construction Contracts

§ 18–15.400 Scope of subpart.

This Subpart 18–15.4 prescribes general principles and procedures for the evaluation and determination of costs in connection with contracts and subcontracts for construction and architect-engineer services related to construction. The applicability of this subpart to cost-reimbursement type contracts is set forth in § 18–15.104 and its applicability to fixed-price type contracts is prescribed in Subpart 18–15.6. In addition, because of the unique nature of certain aspects of construction contracts, guidance is provided with respect to some elements of cost wherein the basis for determination of cost under cost-reimbursement type contracts differs from that used for evaluation of cost under fixed-price type contracts.

§ 18–15.401 Basic considerations.

§ 18–15.401–1 Applicable cost principles.

Except as otherwise provided in this subpart, because of the specialized nature of construction contracts the allowability of costs shall be determined in accordance with Subpart 18–15.2, except to the extent that the provisions of that subpart are clearly inappropriate to construction contracts.

§ 18–15.401–2 Special factors affecting the allowability of costs of construction contracts.

The scope of the work required under construction contracts may vary from routine projects of short duration to be performed within the contractor's home office locality to the erection of complex military installations at remote overseas locations over a period of several years. Climate and terrain may vary greatly among construction sites. All of these factors involving the nature, size, duration, and location of a construction project generally affect the basic determination of the Government as to the type of contract to be awarded and the operating practices, techniques, and procedures employed by the contractor, particularly with respect to the incurrence of the selected costs set forth in §§ 18–15.402–1 and 18–15.402–3. Advance understandings as set forth in § 18–15.107 are particularly important in construction contracts in order to assure complete understanding of the parties and avoid possible subsequent disputes or disallowances.

§ 18–15.402 Selected costs.

§ 18–15.402–1 Construction plant and equipment.

(a) The widely varying conditions of climate, terrain, etc., applicable to individual Government construction projects make it impracticable to determine accurately the actual costs of depreciation of construction plant and equipment used on individual contracts. In addition, in certain cases it may be extremely difficult to determine or allocate accurately the cost of overhaul or repairs applicable in an individual contract since the period of incidence of such cost may not correspond with the period of benefit derived therefrom. Therefore, uniform rates covering depreciation and, where appropriate, overhaul and repair costs shall be used to provide equitable average compensation to contractors for the use of construction plant and equipment under Government contracts. Two separate rate schedules are available for this purpose. The rate schedule contained in DOD Instruction 4105.2, "Uniform Rental Rates for Construction Plant Owned or Controlled and Furnished by a Cost-Plus-a-Fixed-Fee Contractor or by a Cost-Plus-a-Fixed-Fee Subcontractor," referred to in paragraph (b) of this section, is generally appropriate to the types of construction projects awarded under cost-reimbursement type contracts; whereas the rate schedule referred to in paragraph (c) of this section, published by the Associated General Contractors of America, Inc., is generally appropriate to the types of construction projects awarded under fixed-price type contracts. Accordingly, unless the contract specifically provides to the contrary, usage costs for construction plant and equipment under cost-reimbursement type contracts and fixed-price type contracts shall be determined as provided in paragraph (b) and (c) of this section, respectively.

(b) Allowable costs for construction plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor with the approval of the contracting officer for use under cost-reimbursement type contracts shall be based on the provisions of DOD Instruction 4105.2 in effect as of the date of the contract with respect to (1) uniform rental rates in lieu of depreciation, overhead, and profit, and (2) the costs incident to major, minor, and running repairs, complete and thorough overhaul, and loss or destruction of equipment.

(c) Evaluation of costs for the use of construction plant and equipment, in sound and workable condition, which are owned or controlled by a contractor or subcontractor and are furnished for the proper and economical performance of a fixed-price type contract shall be based upon the "Contractors' Equipment Ownership Expense Schedule" published by the Associated General Contractors of America, Inc., in effect as of the date of the contract. This represents a percentage of acquisition cost per working month or fraction thereof for the period of time the equipment is required for the job. If the equipment has already exceeded the assigned service life indicated by the percentage used for depreciation, one year shall be added to the actual age of the equipment and the depreciation percentage shall be revised accordingly. The allowance for equipment ownership expense, computed as provided herein shall be considered to include all costs of depreciation, major repairs and overhaul, and overhead applicable to the equipment. Accordingly, there shall be eliminated from all direct and indirect charges under the contract all costs applicable to items of equipment which are included in the allowance for ownership expense. In considering total costs under any contract, no allowance for overhead shall be applied to the allowance for equipment ownership expense. Since costs incident to maintenance and minor and running repairs are not reflected in the ownership Schedule, separate allowance shall be made therefor. In periods of suspension of work for the convenience of the Government under an appropriate contract clause, the allowance for equipment ownership expense shall not exceed 50 percent of the amount computed as herein indicated. Notwithstanding any sale and lease back, or the acquisition of construction plant and equipment by individuals, firms, corporations, or trusts other than the contractor, and the leasing or rental of such construction plant and equipment to the contractor, the amount to be considered as a cost covering the use of such equipment shall not exceed the allowance for ownership expenses computed as indicated herein. Under certain circumstances, because of the long duration, special nature, or location of the work, it may be more economical to charge the net cost of items of construction plant and equipment directly against a contract in lieu of use of the ownership Schedule. In such cases, where the contract, record of negotiations, or attendant circumstances indicate that particular items of construction plant and equipment were purchased for use solely under a specific contract, the cost of such items, less their proper resale or salvage value, may be charged to the contract as a direct charge, together with costs of repairs, overhaul, and maintenance incident thereto.

§ 18–15.402–2 Construction plant and equipment rented from others.

Costs incurred in connection with rental of construction plant and equipment from others (not under sale and leaseback arrangements) are allowable. Under cost-reimbursement type contracts, rental arrangements are subject to approval by the contracting officer. Costs, such as maintenance and minor or running repairs incident to the operation of such rented equipment, that are not included in the rental rate are allowable. Costs incident to major repair and overhaul are not allowable.

§ 18–15.402–3 Home office expense.

The extent to which a contractor utilizes his home office or central office organization for the performance of general, administrative, and management functions applicable to individual Government construction contracts is dependent upon the geographical location of the job site in relation to the contractor's home office, the magnitude and duration of the project, and other similar factors. Under the types of construction projects awarded on a cost-reimbursement type contract basis, most general, administrative, management, and other indirect cost functions are usually performed at the job site rather than at the

contractor's home or central office. Other minor or incidental services otherwise provided are considered to be compensated for in the fixed fee. Accordingly, expenses incurred in the contractor's central or home office, including compensation and traveling expenses of officers and central office employees, are not allowable under cost-reimbursement type contracts except to the extent authorized by the contract or approved by the contracting officer. Under fixed-price type construction contracts which are performed at least in part through the use of the contractor's central office organization, the costs incurred by the contractor's central office are acceptable to the extent that they are allocable and reasonable in relation to the contract, and provided they do not exceed any limitations of cost stated in the contract or an advance understanding.

§ 18–15.402–4 Job site expenses.

Costs incurred at the job site incident to the performance of the work, such as the cost of superintendence, time-keeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as a direct charge.

§ 18–15.402–5 Temporary use of land, structures, and facilities.

(a) Rental and any other costs, less any applicable credits, incurred in acquiring the temporary use of land, structures, and facilities, are allowable.

(b) Costs, less any applicable credits, incurred in the construction or fabrication of structures and facilities of a temporary nature, are allowable.

Subpart 18–15.5—Contracts for Industrial Facilities

§ 18–15.501 Applicable cost principles.

Except as otherwise provided in this Subpart 18–15.5, the allowability of cost will be determined in accordance with Subpart 18–15.2, 18–15.3, or 18–15.4, as appropriate.

§ 18–15.502 Factors affecting allowability of costs.

A contractor's established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which he produces or services which he renders in the course of his normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services. These operating and administrative differences affect the equitable allocation of indirect costs to facility contracts and make it desirable that advance understandings, as provided in § 18–15.107, be agreed to between the contractor and the contracting officer as to such indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of his own facilities may range from charging all such costs to this acquisition to not charging any such costs thereto. Where necessary to produce an equitable result, the contractor's usual method of allocating indirect cost will be varied, and appropriate adjustment will be made to the pools of indirect cost and the bases of their distribution.

§ 18–15.503 Allocation of indirect manufacturing and plant operational cost.

(a) Facilities contract operations may involve:

(1) The purchase of facilities, or services in connection therewith, on a completed basis from outside sources;

(2) The purchase of completed facilities from outside sources, installation to be accomplished by the contractor's own employees;

(3) Rehabilitation of existing facilities by the contractor's own employees; or

(4) Construction or manufacture of facilities by the contractor from purchased components.

Guidelines for the allocation of indirect costs in these particular circumstances are set forth in paragraphs (b) through (d) of this section.

(b) The purchase of facilities, or services in connection therewith, from outside sources on a completed basis does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(c) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditure of the classes of labor utilized for the performance of the facilities work may be allocated to the facilities work. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(d) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items which are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all such work may be allocated to the facilities contract.

§ 18–15.504 General and administrative costs (including home office allocations).

General and administrative costs consist of items of cost attributable to the overall management, supervision, and conduct of the business. General and administrative costs in connection with the acquisition of or work on industrial facilities shall be allowed only when and to the extent specifically provided for in the contract. In allocating general and administrative costs, consideration should be given to (a) all work to which such costs are common, including acquisition of or work on facilities by the contractor for his own account, and (b) any difference in the amount of administrative effort expended by the contractor on his various activities, such as between production and fixed asset improvement programs or between the acquisition of facilities by purchase and by construction or manufacture. However, in no event will prices charged pursuant to § 18–15.505 be increased by the allocation of additional general and administrative costs.

§ 18–15.505 Contractor's commercial products.

If facilities which constitute the contractor's usual commercial products (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other supplies for like quantities of the same or substantially the same items, whichever is lower.

Subpart 18–15.6—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

§ 18–15.600 Scope of subpart.

This subpart 18–15.6 provides guidance for the use of Subparts 18–15.2, 18–15.3, and 18–15.4 (a) in the evaluation of costs in pricing of negotiated fixed-price type contracts and subcontracts where such evaluation is required to establish prices for such contracts, (b) in the negotiation of termination settlements, and (c) in the negotiation of any adjustment in price required by the contract, such as issuance of change orders, a suspension of work for the convenience of the Government under an appropriate contract clause, and equitable adjustments under the Government-Furnished Property clause.

§ 18–15.601 Definition of fixed-price type contracts.

"Fixed-price type" contracts include, for purposes of this subpart, the following:

(a) Firm fixed-price contracts;

(b) Fixed-price contracts with escalation;

(c) Fixed-price contracts providing for the redetermination of price;

(d) Fixed-price incentive contracts;

(e) Non-cost-reimbursable portion of time and materials contracts; and

(f) Labor-hour contracts.

§ 18–15.602 Basic considerations.

(a) Under fixed-price type contracts, the negotiated price is the basis for payment to a contractor, whereas allowable costs are the basis for reimbursement under cost-reimbursement type contracts. Cost and accounting data may provide guides for ascertaining fair compensation in the negotiation of fixed-price type contracts but are not rigid measures of it. Other types of data, criteria, or standards may furnish reliable guides to fair compensation. The ability to apply standards of business judgment as distinct from strict accounting principles is at the heart of a negotiated price or settlement.

(b) Among the different types of fixed-price type contracts, the need for consideration of costs varies considerably, as indicated in this paragraph:

(1) *Retrospective pricing and settlements.* In negotiating firm fixed prices or settlements for work which has been completed at the time of negotiation (e.g., final negotiations under fixed-price incentive contracts, redetermination of price after completion of the work, or negotiation of a settlement agreement under a contract terminated for the convenience of the Government), the treatment of costs is a major factor in arriving at the amount of the price or settlement. However, even in these situations, the finally agreed-on price or settlement may represent something other than the sum total of acceptable cost plus profit, since the final price accepted by each party does not necessarily reflect agreement on the evaluation of each element of cost, but rather a final resolution of all issues in the negotiation process.

(2) *Forward pricing.* The extent to which costs influence forward pricing varies greatly from case to case. In negotiations covering future work, actual costs cannot be known and the importance of cost estimates depends on the circumstances. The contracting officer must consider all the factors affecting the reasonableness of the total proposed price, such as the technical, production, or financial risk assumed, the complexity of work, the extent of competitive pricing, and the contractor's record for efficiency, economy, and ingenuity, as well as available cost estimates. He must be free to bargain for a total price which equitably distributes the risks between the contractor and the Government and provides incentives for efficiency and cost reduction. In negotiating such a price, it is not possible to identify the treatment of specific cost elements since the bargaining is on a total price basis. Thus, while cost data is often a valuable aid, it will not control negotiation of prices for work to be performed, or a target price under an incentive contract.

§ 18–15.603 Cost principles and their use.

(a) When, pursuant to § 18–15.602, costs are to be considered in the negotiation of fixed-price type contracts, the appropriate subpart of this Part 18–15 shall be used as a guide in the evaluation of cost data required to establish a fair and reasonable price in conjunction with other pertinent negotiation considerations.

(b) In retrospective pricing, whenever an occasion arises in which acceptability of a specific item of cost becomes an issue, the appropriate subpart of this Part 18–15 will serve as a guide for the contracting officer in his conduct of negotiations.

(c) In applying this Part 18–15 to fixed-price contracts, contracting officers will (1) not be expected to negotiate agreement on every individual element of cost; and (2) be expected to use their judgment as to the degree of detail in which they consider the individual elements of cost in arriving at their evaluation of total cost, where such evaluation is appropriate. However, the negotiation record should fully substantiate and justify the reasoning leading to any negotiated price.

(d) In order to permit the proper evaluation of cost data submitted by contractors for use in negotiating prices, it may be necessary to obtain breakdowns or account analyses with respect to some cost items, particularly those whose treatment may be dependent upon special circumstances as stated in the principles. Contractors will be expected to be responsive to reasonable requests for data of this kind.

PART 18–16—PROCUREMENT FORMS

Sec.
18–16.000 Scope of part.
18–16.001 Index of procurement forms for NASA use.

Subpart 18–16.1—Forms for Advertised Supply Contracts

18–16.100 Scope of subpart.
18–16.101 Separate award type (Standard Forms 30, 31, 32, 26, and 36, and NASA Form 250).
18–16.101–1 General.
18–16.101–2 Conditions for use.
18–16.102 Combination type (Standard Form 33).
18–16.102–1 General.
18–16.102–2 Conditions for use.

Subpart 18–16.2—Forms for Negotiated Procurements

18–16.200 Scope of subpart.
18–16.201 Request for quotations (Standard Form 18).
18–16.201–1 General.
18–16.201–2 Conditions for use.
18–16.202 Negotiated contract forms.
18–16.202–1 Contracts in excess of $2,500 (Standard Form 32, NASA Form 250).
18–16.202–2 Contracts not in excess of $2,500 (NASA Form 177, Standard Forms 44 and 147).
18–16.202–3 Proposal and acceptance (NASA Forms 147, 177).
18–16.202–4 Cost-reimbursement type supply contracts (NASA Form 418).
18–16.202–5 Fixed-price research and development contracts (NASA Form 247).
18–16.202–6 Fixed-price research contracts with nonprofit institutions—short form (NASA Form 246).
18–16.202–7 Cost-reimbursement research and development contracts (NASA Form 417).
18–16.202–8 Cost-reimbursement research and development contracts with educational or nonprofit institutions (NASA Form 419).
18–16.202–9 Cost-reimbursement research contracts with nonprofit institutions including educational institutions (NASA Form 419S).
18–16.202–10 Facilities contracts (NASA Forms 746, 747, and 748).
18–16.206 Cost and price analysis.
18–16.207 Cost and price analysis for contract price redetermination.

Subpart 18–16.3—Purchase and Delivery Order Forms

Sec.
18–16.300 Scope of subpart.
18–16.301 Receipt for cash—subvoucher (Standard Form 1165).
18–16.302 Purchase order forms (Standard Forms 44, 147; NASA Form 177; NASA "Ship and Quote" Form).

Subpart 18–16.4—Forms for Construction Contracts

18–16.400 Scope of subpart.
18–16.401 Standard Forms 19, 19A, 20, 21, 22, 23, 23A, NASA Form 604, and DD Form 1260.
18–16.401–1 General.
18–16.401–2 Use of forms for negotiated construction contracts.
18–16.401–3 Conditions for use.
18–16.401–4 Terms, conditions, and provisions.

Subpart 18–16.5—Special Contract and Order Forms

18–16.500 Scope of subpart.
18–16.501 Negotiated utility service contract forms.
18–16.501–50 NASA Form 550, Negotiated Utility Service Contract
18–16.501–51 NASA Form 550S, Negotiated Utility Service Contract (Short Form).
18–16.501–52 Appendices to contract forms.
18–16.501–53 Contents of a negotiated utility service contract.
18–16.501–54 Terms, conditions, and provisions.

Subpart 18–16.6—Forms for Coordinated Procurement

18–16.600 Scope of subpart.
18–16.601 NASA-Defense Purchase Request (NASA Form 523).
18–16.602 Acceptance of NASA-Defense Purchase Request.
18–16.603 Payments (Standard Form 1080).

Subpart 18–16.7—Contract Termination Forms

18–16.700 Scope of subpart.
18–16.701 Notices of termination.
18–16.702 Settlement proposal forms.
18–16.702–1 Settlement Proposal—Inventory Basis (DD Form 540).
18–16.702–2 Settlement Proposal—Total Cost Basis (DD Form 541).
18–16.702–3 Settlement Proposal for Cost-Reimbursement Type Contracts (DD Form 547).
18–16.702–4 Settlement Proposal—Short Form (DD Form 831).
18–16.702–5 Inventory Schedules (DD Forms 542, 543, 544, 545, and 832).

Sec.

18-16.702-6 Schedule of Accounting Information (DD Form 546).
18-16.703 Application for Partial Payment (DD Form 548).
18-16.704 Notice of Audit Status Date (DD Form 547S).
18-16.705 Forms of settlement agreement.
18-16.706 Instructions for use of Termination Forms (DD Form 1114).

Subpart 18-16.8—Miscellaneous Forms

18-16.800 Scope of subpart.
18-16.802 Statement of Contingent Fees (Standard Form 119).
18-16.803 Compliance with labor laws, regulations, and clauses.
18-16.803-1 Construction Contracts (DB 11, Standard Form 1093, CB 16-19).
18-16.803-2 Supply Contracts (PC 12, PC 13, Standard Form 99).
18-16.804 U.S. Government Tax Exemption (Standard Form 1094, TD 1444, TD 1486).
18-16.805 Bond forms.
18-16.810 Bidders Mailing List Application (Standard Form 129).
18-16.810-1 General.
18-16.810-2 Conditions for use.
18-16.811 Security Requirements (DD Forms 441 and 254).
18-16.811-1 Security agreement.
18-16.811-2 Security requirements checklist.
18-16.812 Release and assignment forms (NASA Forms 778, 779, 780, and 781).
18-16.814 Architect-Engineer Questionnaire Form (Standard Form 251).
18-16.815 Contract modification forms (NASA Forms 450, 449, 449-1, and 449-2).
18-16.815-1 Change Order (NASA Form 450).
18-16.815-2 Supplemental Agreement (NASA Form 449).
18-16.816 Identical Bid Report for Procurement (DJ 1500).
18-16.850 Semiannual Report of Participating Companies (NASA Form 524).
18-16.851 Pre-Award Surveys (NASA Forms 585 and 586).
18-16.852 Procurement Request (NASA Form 404).
18-16.853 Requests for Proposals (NASA Form 529).
18-16.854 Request for Contractor Clearance (NASA Form 446).
18-16.855 Nonpersonal Services Contracts (NASA Form 610).

Sec.

18-16.856 Contractor Financial Management Report (NASA Form 533).
18-16.857 Bill of Material (DD Forms 346 and 347).
18-16.858 Tax forms.
18-16.859 Letter contracts.
18-16.859-1 General.
18-16.859-2 Cost-reimbursement type letter contract.
18-16.859-3 Fixed-price type letter contract.
18-16.859-4 Letter contract forms.
18-16.860 Processing payments under cost-reimbursement contracts.
18-16.861 Withholdings under Davis-Bacon Act (S.F. 1093).
18-16.862 Unitary Plan Wind Tunnel Facilities (NASA Form 362).

Subpart 18-16.9—Procurement Action and Status Reports

18-16.900 Scope of subpart.
18-16.901 Purpose.
18-16.902 Applicability.
18-16.903 Definition.
18-16.904 Reports required.
18-16.904-1 Individual Procurement Action Report (NASA Form 507).
18-16.904-2 NASA Procurement Status Report (NASA Form 561).
18-16.904-3 Geographic Distribution of NASA Subcontracts (NASA Form 667).

AUTHORITY: The provisions of this Part 18-16 issued under 42 U.S.C. 2473(b)(1).

§ 18-16.000 Scope of part.

(a) This Part 18-16 prescribes forms for use in connection with the procurement by NASA of supplies and services and provides instructions and guidance for their use.

(b) Contract forms authorized by this Part 18-16, which contain General Provisions, have been designed as a matter of convenience for NASA procurement personnel and, notwithstanding § 18-1.109-1(a)(3), clauses contained in such forms may be deleted and other clauses added or substituted by appropriate reference in the "Alterations in Contracts" clause: *Provided*, That the deletions, additions, and substitutions are in compliance with or supported by this chapter.

§ 18-16.001 Index of procurement forms for NASA use.

Listed in this section, in numerical sequence, are NASA forms, U.S. Standard Forms, DOD forms, and certain miscellaneous forms that are authorized for use in NASA procurement. The current edition of each form is shown in parentheses under the column headed "Date"; prior editions shall not be used. References to form numbers are to the current editions of the forms identified in the list below, unless otherwise specifically indicated.

(a) *NASA Forms.*

Number	Date	Title
147	5-63	Proposal and Acceptance (Negotiated Supply Contract).
177	6-61	Purchase Order.
246	1-63	General Provisions for Short Form Fixed-Price Contract with Nonprofit Institutions.
247	1-63	General Provisions for Fixed-Price Research and Development Contract.
250	1-63	Additional General Provisions to U.S. Standard Form 32 (9-61 Ed.).
362	11-58	Agreement for Use of NASA Unitary Plan Wind Tunnel Facilities.
404	3-62	Procurement Request.
417	1-63	General Provisions for Cost-Type Research and Development Contract.
418	1-63	General Provisions for Cost-Plus-a-Fixed-Fee Supply Contract.
419	1-63	General Provisions for Cost-Remibursement Research and Development Contracts with Educational or Nonprofit Institutions.
419S	8-61	General Provisions for Short Form Reimbursement Research Contract with Educational or Nonprofit Institutions.
437	4-59	Cover Page for Negotiated Contract.
437-1	4-59	Signature Page for Negotiated Contract.
446	5-59	Request for Contractor Clearance.
449	5-59	Supplemental Agreement.
449-1	6-63	Contract Modification Continuation Sheet.
449-2	5-59	Signature Page for Supplemental Agreement.
450	5-59	Change Order.
456	9-59	Notice of Costs Suspended and/or Disapproved.
456-1	9-59	Notice of Costs Suspended and/or Disapproved Continuation Sheet.
507	6-63	Individual Procurement Action Report.
523	4-61	NASA—Defense Purchase Request.
524	6-63	Semiannual Report of Participating Companies.
529	1-61	Sample Request for Proposal—Soliciting Proposals for Major R&D Contracts.
533	2-62	Contractor Financial Management Report.
550	7-62	Negotiated Utility Service Contract.
550S	7-62	Negotiated Utility Service Contract (Short Form).
550A-1	7-62	Electric Service Specifications.
550A-2	7-62	Gas Service Specifications.
550A-3	7-62	Water Service Specifications.
550A-4	7-62	Steam Service Specifications.
550A-5	7-62	Sewage Service Specifications.
551	4-62	Cover Page for Letter Contracts.
551-1	4-62	Letter of Transmittal for Letter Contracts.
551-2	4-62	Schedule Format for Letter Contracts.
551-3	4-62	General Provisions for Letter Contracts.
561	7-62	Procurement Status Report.
585	9-61	Request for Pre-Award Survey.
586	9-61	Financial Data Sheet.
604	10-61	Additional General Provisions to U.S. Standard Form 23-A(4-61Ed.).
610	12-61	General Provisions for Fixed-Price Nonpersonal Services Contract.
746	3-63	General Provisions for Cost-Reimbursement Facilities Acquisition Contract.
747	3-63	General Provisions for Facilities Use Contract.
748	3-63	General Provisions for Cost-Reimbursement Consolidated Facilities Contract.
778	1-63	Contractor's Release.
779	1-63	Assignee's Release.
780	1-63	Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
781	1-63	Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

(b) *U.S. Standard Forms.*

Number	Date	Title
18	5-59	Request for Quotation.
19	1-59	Invitation, Bid, and Award (Construction, Alteration, or Repair).
19A	1-59	Labor Standards Provisions Applicable to Contracts in Excess of $2,000.
20	1-61	Invitation for Bid (Construction Contract).
21	1-61	Bid Form (Construction Contract).
22	1-61	Instructions to Bidders (Construction Contract).
23	1-61	Construction Contract.
23A	4-61	General Provisions (Construction Contract).
24	11-50	Bid Bond.
25	11-50	Performance Bond.
25A	11-50	Payment Bond.
26	11-49	Award (Supply Contract).
27	11-50	Performance Bond—Corporate Co-Surety Form.
27A	11-50	Payment Bond—Corporate Co-Surety Form.
27B	11-50	Continuation Sheet—Corporate Co-Surety Bond.
28	11-50	Affidavit of Individual Surety.
30	10-57	Invitation and Bid (Supply Contract).
31	11-49	Schedule (Supply Contract).
32	9-61	General Provisions (Supply Contract).
33	10-57	Invitation, Bid, and Award.
34	11-50	Annual Bid Bond.
35	11-50	Annual Performance Bond.
36	11-49	Continuation Sheet (Supply Contract).
44	6-54	Purchase Order—Invoice—Voucher.
99	6-58	Notice of Award of Contract.
119	12-52	Contractor's Statement of Contingent or Other Fees.
129	8-52	Bidders Mailing List Application.
147	2-55	Order—Invoice—Voucher.
148	7-53	Order—Invoice—Voucher Continuation Sheet.
251	6-61	Architect-Engineer Questionnaire.
1034	5-61	Public Voucher for Purchases and Services Other than Personal.
1034A	5-61	Public Voucher for Purchases and Services Other than Personal—Memorandum Copy.
1035	5-61	Public Voucher for Purchases and Services Other than Personal—Continuation Sheet.
1035A	5-61	Public Voucher for Purchases and Services Other than Personal Continuation Sheet—Memorandum Copy.
1080	8-59	Voucher for Transfers Between Appropriations and/or Funds.
1093	3-57	Schedule of Withholdings under the Davis-Bacon Act.
1094	7-61	U.S. Tax Exemption Certificate.
1103	Rev. 7-62	U.S. Government Bill of Lading.
1165	7-61	Receipt for Cash—Subvoucher.
1169	8-58	Transportation Request.

(c) *Department of Defense Forms.*

Number	Date	Title
254	5-60	Security Requirements Checklist.
346	7-62	Raw (Basic Processed) and Semifabricated Stock Form.
347	7-62	Bill of Materials for Subcontracted Parts—Purchased Parts—Government-Furnished Property.
396	1-56	Notice of Costs Suspended and/or Disapproved.
441	5-54	Security Agreement.
448-2	3-61	Acceptance of MIPR.
540	4-57	Settlement Proposal (Inventory Basis).
541	4-57	Settlement Proposal (Total Cost Basis).
542	4-57	Inventory Schedule A (Metals in Mill Product Form).
543	4-57	Inventory Schedule B (Raw Materials).
543C	4-57	Inventory Schedule B (Continuation Sheet).
544	4-57	Inventory Schedule C (Work in Process).
544C	4-57	Inventory Schedule C (Continuation Sheet).
545	4-57	Inventory Schedule D (Dies, Jigs, Fixtures, etc., and Special Tools).
545C	4-57	Inventory Schedule D (Continuation Sheet).
546	4-57	Schedule of Accounting Information.
547	4-57	Settlement Proposal for Cost-Reimbursement Type Contracts.
547S	4-57	Notice of Audit Status Date.
548	7-58	Application for Partial Payment.
831	10-59	Settlement Proposal (Short Form).
832	4-57	Termination Inventory Schedule E (Short Form).
1114	10-59	Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
1260	12-58	Amendment to Invitation for Bid.

(d) *Miscellaneous Forms.*

Number	Date	Title
DB 11	10-53	Request for Determination.
PC 12	3-49	Form Letter Explaining Walsh-Healey Act.
PC 13	1-50	Poster.
CB 16-19	6-62	Construction Contract Award Notification.
TD 720	1-63	Quarterly Federal Excise Tax Return.
TD 1444	1-62	Alcohol for Use of the United States.
TD 1486	10-62	Specially Denatured Alcohol for Use of the United States.
DJ 1500	6-61	Identical Bid Report for Procurement.

Subpart 18–16.1—Forms for Advertised Supply Contracts

§ 18–16.100 Scope of subpart.

This Subpart 18–16.1 sets forth instructions concerning forms used in procuring supplies by formal advertising.

§ 18–16.101 Separate award type (Standard Forms 30, 31, 32, 26, and 36, and NASA Form 250).

§ 18–16.101–1 General.

Except as provided in § 18–16.102, the following supply contract forms shall be used by NASA procurement offices in effecting procurement by formal advertising:

(a) Invitation and Bid (Supply Contract) (Standard Form 30);

(b) Schedule (Supply Contract) (Standard Form 31);

(c) General Provisions (Supply Contract (Standard Form 32);

(d) NASA Form 250 (Additional General Provisions to U.S. Standard Form 32 (9–61 Ed.));

(e) Any other special terms for the Invitation for Bids or additional contract provisions prescribed by this Regulation;

(f) Award (Supply Contract) (Standard Form 26);

(g) Continuation Sheet (Supply Contract) (Standard Form 36) (when needed with Standard Form 31 or 26); and

(h) Amendment to Invitation for Bids (DD 1260), when needed.

§ 18–16.101–2 Conditions for use.

(a) The Invitation for Bids (Standard Form 30) and the Schedule (Standard Form 31) shall be prepared in accordance with § 18–2.201.

(b) Standard Form 32 and NASA Form 250 (Additional General Provisions) may be attached to each copy of the Invitation for Bids. Alternatively, only one copy of Standard Form 32 and NASA Form 250 need be furnished to each bidder for retention, if such provisions are specifically incorporated by reference (including each form title, number, and date) in Standard Form 30 or 31.

(c) Award of contracts shall be accomplished by furnishing a completed Standard Form 26 to each successful bidder. Documents previously supplied bidders will not accompany the successful bidder's copy of Standard Form 26. The requirement for use of Standard Form 26 does not preclude the additional use of informal documents, including telegrams, as notices of award.

§ 18–16.102 Combination Type (Standard Form 33).

§ 18–16.102–1 General.

Standard Form 33, which is a combination Invitation for Bids, Bid, Schedule, and Award, may be used in lieu of Standard Forms 30, 31, and 26, as prescribed in § 18–16.101–1, whenever the space available on Standard Form 33 for the Schedule and the Award is sufficient. The following forms are prescribed for use with Standard Form 33:

(a) General Provisions (Supply Contract) (Standard Form 32);

(b) NASA Form 250 (Additional General Provisions to U.S. Standard Form 32 (9–61 Ed.));

(c) Any other special terms for the Invitation for Bids or additional contract provisions prescribed by this Regulation;

(d) Continuation Sheet (Standard Form 36), when needed; and

(e) Amendment to Invitation for Bids (DD Form 1260) when needed.

§ 18–16.102–2 Conditions for use.

(a) The Invitation for Bids and Schedule portion of Standard Form 33

shall be prepared in accordance with § 18–2.201.

(b) Standard Form 32 and any additional general provisions shall be utilized in accordance with the conditions specified in § 18–16.102–1.

(c) Award of contract shall be accomplished by completing the award portion of Standard Form 33 and furnishing a copy of the completed form to each successful bidder. The required use of the Award portion of Standard Form 33 does not preclude the additional use of informal documents, including telegrams, as notices of award.

(d) DD Form 1260 (Amendment to Invitation for Bids) shall be used when it is necessary to issue an amendment.

Subpart 18–16.2—Forms for Negotiated Procurements

§ 18–16.200 Scope of subpart.

This Subpart 18–16.2 sets forth instructions concerning the forms used in procuring supplies or services by negotiation.

§ 18–16.201 Request for quotations (Standard Form 18).

§ 18–16.201–1 General.

Standard Form 18 is prescribed for use in obtaining price, delivery, and related information from suppliers.

§ 18–16.201–2 Conditions for use.

(a) Standard Form 18 is authorized for use when it appears reasonably certain that the procurement will result in a fixed-price contract involving extensive negotiations or in a cost-reimbursement type contract.

(b) Standard Form 36 (Continuation Sheet) may be used as required.

(c) Standard Form 18 shall be used for negotiated procurements of $2,500 or less (including purchase orders) and may be used in procurements in excess of $2,500 when a written informational quotation, rather than a binding quotation, is desired (see § 18–1.309).

(d) Except when firm offers must be obtained, Standard Form 18 is authorized for use when written quotations are solicited.

(e) A quotation submitted on Standard Form 18 is only informational and is not to be construed as a legal offer, acceptance of which would result in a binding contract. Accordingly, issuance of a purchase order (or other document) pursuant to a supplier's quotation on Standard Form 18 does not constitute acceptance but an offer to buy certain goods or services upon certain specified terms and conditions. Under the procedure of obtaining a quotation on Standard Form 18 and issuing a purchase order, the Government may, at any time prior to acceptance by the contractor of the purchase order, withdraw, amend, or cancel its offer, thereby minimizing disputes and administrative costs. In such cases, a written notice should be given the supplier. Since substantial performance by the supplier, prior to cancellation, may constitute acceptance and hence create a contract, the contracting officer should verify whether or not acceptance of the offer has taken place prior to cancellation of the offer.

§ 18–16.202 Negotiated contract forms.

The forms described in this section are authorized for use in negotiated procurements. Instructions for their use are set forth in this chapter as indicated in this section.

§ 18–16.202–1 Contracts in excess of $2,500 (Standard Form 32, NASA Form 250).

For contracts in excess of $2,500, Standard Form 32 (General Provisions (Supply Contract)) shall be used, supplemented by NASA Form 250 (Additional General Provisions to U.S. Standard Form 32 (Sept. 1961 Edition)). Standard Form 36 (Continuation Sheet) may be used as required.

§ 18–16.202–2 Contracts not in excess of $2,500 (NASA Form 177, Standard Forms 44 and 147).

(a) For negotiated purchases not in excess of $2,500, NASA Form 177 may be used in lieu of Standard Form 44 or 147. See § 18–3.605–3 for instructions on the use of NASA Form 177.

(b) Standard Form 44 (Purchase Order—Invoice—Voucher) is a small purchases form for transactions not in excess of $2,500 and is authorized for use in accordance with the instructions and limitations set forth in § 18–3.605–1. It is especially useful in over-the-counter transactions, purchases at isolated stations, and purchases away from the purchasing office. See § 18–16.302 for use of Standard Form 44 for small purchases.

(c) Standard Form 147 (Order—Invoice—Voucher) is a combination purchase or delivery order, vendor's invoice, receiving report, and public voucher with space for purchase data, vendor's invoicing, and allied budget, accounting, and voucher payment data. It is designed primarily for use when single delivery payment transactions involving amounts not in excess of $2,500 are contemplated. See § 18–3.605–2 for instructions for its use. Standard Form 148 (Order—Invoice—Voucher Continuation Sheet) is authorized for use as required.

§ 18–16.202–3 Proposal and acceptance (NASA Forms 147, 177).

NASA Form 147 will normally be used in negotiated supply contracts for standard or commercial type items unless a purchase order form (NASA Form 177) is appropriate for use.

§ 18–16.202–4 Cost-reimbursement type supply contracts (NASA Form 418).

The General Provisions contained in NASA Form 418 shall be used in all cost-reimbursement supply contracts, together with a Cover Page (NASA Form 437), a Schedule, and a Signature Page (NASA Form 437–1).

§ 18–16.202–5 Fixed-price research and development contracts (NASA Form 247).

Except when NASA Form 246 is used pursuant to § 18–7.350, NASA Form 247 shall be used in all fixed-price research and development contracts, together with a Cover Page (NASA Form 437), a Schedule, and a Signature Page (NASA Form 437–1).

§ 18–16.202–6 Fixed-price research contracts with nonprofit institutions—short form (NASA Form 246).

The General Provisions contained in NASA Form 246 are authorized for use in fixed-price contracts for basic or applied research with nonprofit institutions of higher education, or with nonprofit institutions whose primary purpose is the conduct of scientific research, when a short form is desired. Additional clauses may be added to or substituted for the clauses contained in NASA Form 246 in accordance with § 18–7.350–18. A Cover Page (NASA Form 437), a schedule, and a Signature Page (NASA Form 437–1) shall be used with NASA Form 246.

§ 18–16.202–7 Cost-reimbursement research and development contracts (NASA Form 417).

Except when NASA Form 419 or 419S is used pursuant to § 18–16.202–8 or § 18–16.202–9, NASA Form 417 shall be used in NASA cost-reimbursement type research and development contracts. A Cover Page (NASA Form 437), a Schedule, and a Signature Page (NASA Form 437–1) shall be used with NASA Form 417.

§ 18–16.202–8 Cost-reimbursement research and development contracts with educational or nonprofit institutions (NASA Form 419).

Except when NASA Form 419S is used pursuant to § 18–16.202–9, NASA Form 419 shall be used in cost-reimbursement type research and development contracts with educational or nonprofit institutions which involve no fee or profit, together with a Cover Page (NASA Form 437), a Schedule, and a Signature Page (NASA Form 437–1).

§ 18–16.202–9 Cost-reimbursement research contracts with nonprofit institutions including educational institutions (NASA Form 419S).

NASA Form 419S is authorized for use in contracts for basic or applied scientific research at institutions of higher education, or at nonprofit institutions whose primary purpose is the conduct of scientific research, when a short form of contract is desired. A Cover Page (NASA Form 437), a Schedule, and a Signature Page (NASA Form 437–1) shall be used with NASA Form 419S. Additional clauses may be added to or substituted for the clauses contained in NASA Form 419S, in accordance with § 18–7.461.

§ 18–16.202–10 Facilities contracts (NASA Forms 746, 747, and 748).

(a) NASA Form 746 (General Provisions for Cost-Reimbursement Facilities Acquisition Contract) shall be used for the acquisition by the contractor on a cost-reimbursement basis of facilities for the account of the Government (see § 18–13.402).

(b) NASA Form 747 (General Provisions for Facilities Use Contract) provides for the use by the contractor of Government-owned facilities in those instances where no direct Government funding is applied (see § 18–13.402).

(c) NASA Form 748 (General Provisions for Cost-Reimbursement Consolidated Facilities Contract) shall be used as a combination of both the acquisition and use of facilities (see §§ 18–13.402 and 18–13.403).

§ 18–16.206 Cost and price analysis.

Except as provided in § 18–16.207, when cost data are required in connection with a proposal, DD Form 633 shall be used. However, when the contractor's accounting system or the type of procurement involved makes the use of this form impracticable or inappropriate, the contractor may submit the necessary data in a format acceptable to the contracting officer.

§ 18–16.207 Cost and price analysis for contract price redetermination.

DD Form 784 shall be prepared by the contractor for the submission of cost data required for contract price redetermination except when the contractor and the contracting officer have agreed upon an alternative method of cost analysis presentation. Contractor reproduction of DD Form 784 is authorized. However, no alternative form for general application shall be used.

Subpart 18–16.3—Purchase and Delivery Order Forms

§ 18–16.300 Scope of subpart.

This Subpart 18–16.3 prescribes forms for use when purchases are authorized or required to be made by the purchase order or imprest fund method, and as delivery orders.

§ 18–16.301 Receipt for Cash—Subvoucher (Standard Form 1165).

Standard Form 1165 may be used in connection with procurement by the imprest fund (petty cash) method in accordance with § 18–3.604.

§ 18–16.302 Purchase order forms (Standard Forms 44, 147; NASA Form 177; NASA "Ship and Quote" Form).

(a) Standard Form 44 (Purchase Order—Invoice—Voucher) is authorized for use to accomplish small purchases in accordance with § 18–3.605.

(b) Standard Form 147 (Order—Invoice—Voucher) and Standard Form 148 (Order—Invoice—Voucher Continuation Sheet) are authorized for use as purchase orders for small purchases and as delivery orders for ordering and scheduling deliveries against an established contract (see § 18–3.605–2).

(c) NASA Form 177 (Purchase Order) is authorized for use in accomplishing small purchases in lieu of Standard Form 44 or 147, in accordance with the instructions in § 18–3.605–3.

(d) The NASA Ship and Quote form may be used to make small purchases in lieu of Standard Form 44, Standard Form 147, or NASA Form 177, in accordance with the instructions in § 18–3.605–4.

Subpart 18–16.4—Forms for Construction Contracts

§ 18–16.400 Scope of subpart.

This Subpart 18–16.4 prescribes forms for use in construction contracts, which are defined for the purposes of this Subpart as contracts for the construction, alteration, or repair (including painting and decorating) of buildings, bridges, roads, or other kinds of real property.

§ 18–16.401 Standard Forms 19, 19A, 20, 21, 22, 23, 23A, NASA Form 604, and DD Form 1260.

§ 18–16.401–1 General.

The following forms are prescribed for use in formally advertised construction contracts where the work is to be performed in the United States and its possessions:

(a) Standard Form 19—Invitation, Bid, and Award (Construction, Alteration, or Repair);

(b) Standard Form 19A—Labor Standards Provisions—Applicable to Contracts in Excess of $2,000;

(c) Standard Form 20—Invitation for Bids (Construction Contract);

(d) Standard Form 21—Bid Form (Construction Contract);

(e) Standard Form 22—Instructions to Bidders (Construction Contract);

(f) Standard Form 23—Construction Contract;

(g) Standard Form 23A—General Provisions (Construction Contract);

(h) NASA Form 604—Additional General Provisions to U.S. Standard Form 23A (April 1961 Edition);

(i) DD Form 1260—Amendment to Invitation for Bids, on an optional basis; and

(j) Continuation Sheet—There is no prescribed form of Continuation Sheet for construction contracts. A blank sheet, incorporating the contract or invitation number, as appropriate; page number and number of pages; and name of bidder or contractor, may be used for this purpose. Standard Form 36, Continuation Sheet (Supply Contract), shall not be used for construction contracts.

§ 18–16.401–2 Use of forms for negotiated construction contracts.

Use of the forms prescribed in § 18–16.401–1 is optional for negotiated construction contracts. When used for negotiated contracts, the forms shall be adapted by lining out or obliterating the words "sealed" and "publicly opened" and adding language to indicate the authority for negotiation, and to provide that wherever the words "invitation" and "bid" occur they will be deemed to refer to "solicitation" and "offer," respectively.

§ 18–16.401–3 Conditions for use.

(a) *Advertised contracts not to exceed $2,000.* Standard Form 19 shall be used for construction contracts not in excess of $2,000 executed as a result of formal advertising. Standard Form 22 may also be used.

(b) *Negotiated contracts not exceeding $2,000.* Either Standard Form 19 or NASA Form 177W shall be used for construction contracts of $2,000 or less executed as a result of negotiation.

(c) *Contracts estimated to exceed $2,000, but not to exceed $10,000.* Standard Forms 19 and 19A shall be used for construction contracts estimated to exceed $2,000 but not to exceed $10,000, executed as a result of formal advertising. Standard Form 22 also may be used. The following language shall be inserted in the bid portion of Standard Form 19 prior to issuance of the Invitation for Bids:

If this bid exceeds $2,000, the bidder shall furnish with his bid a bid guaranty in an amount equal to ____ percent of his bid; failure to submit the guaranty on time is cause for rejection of the bid. The undersigned further agrees, if this bid exceeds $2,000, (i) to comply with the Labor Standards Provision Applicable to Contracts in Excess of $2,000 (Standard Form 19A) in lieu of Provision 10 hereof; (ii) to pay not less than the minimum hourly rates of wages set forth in the specifications; and (iii) to furnish a performance bond in an amount equal to ____ percent and a payment bond in an amount equal to 50 percent of the contract price with surety or sureties acceptable to the Government. (January 1964)

(d) Contracts estimated to exceed $10,000. Standard Forms 19A, 20, 21, 22, 23, and 23A shall be used for contracts estimated to exceed $10,000 executed as a result of formal advertising and may be used for negotiated construction contracts estimated to exceed $10,000. NASA Form 604 shall be used to provide additional general provisions in connection with Standard Form 23A.

§ 18–16.401–4 Terms, conditions, and provisions.

(a) The use of additional contract provisions consistent with those contained in the above forms is authorized and, where required elsewhere in this chapter, the use of such additional clauses is mandatory. NASA Form 604 shall be used to supplement Standard Form 23A. The NASA "New Technology" and "Property Rights in Inventions" clauses shall be used as additional required clauses under the circumstances set forth in § 18–9.101–2.

(b) Changes or additional provisions inconsistent with those contained in the standard forms shall be incorporated when required by this Chapter or when approved by the Office of Procurement (Code KDR) pursuant to § 18–1.109. A copy of any such approval pursuant to § 18–1.109–2 shall be forwarded by the Office of Procurement to the General Services Administration.

(c) The provisions of paragraphs (a) and (b) of this section shall not be construed as authorizing the reinstatement in Standard Form 19 of clauses which appear in Standard Form 23A and which have either been condensed or omitted in the development of Standard Form 19 in the interests of uniformity or simplification. Where such reinstatement is deemed essential, it shall be treated as a deviation in accordance with § 18–1.109. Deviations are not required for the use, with Standard Form 19, of clauses which,

although not properly a part of Standard Form 23A, may accompany it when printed for use within NASA.

(d) Clause 3 of Standard Form 19, entitled "Disputes," may be changed by inserting in the Schedule or Specifications the following:

Alterations. As used in Clause 3 of the General Provisions, "the head of the Federal Agency" means "the Administrator, NASA." (January 1964)

(e) Deletion or modification of clauses in the forms in this § 18–16.401–4 shall be accomplished in the "Alterations" paragraph of Standard Form 23, or in an "Alterations" paragraph added to the Schedule of Standard Form 19, or in the Specifications, as appropriate.

(f) Whenever Standard Forms 19 and 19A are used for formally advertised contracts, the "Covenant Against Contingent Fees" provision need not be included.

(g) Where the "Equal Opportunity" clause set forth in § 18–12.802 is required by that section, the clause set forth therein, including the footnote thereto, shall be substituted for the "Nondiscrimination in Employment" clause in Standard Form 23A.

(h) When NASA Form 604 is used for negotiated construction contracts, the "Examination of Records" clause set forth in § 18–7.104–15 shall be included in the contract. Consideration should also be given to deleting Clause 29, "Federal, State, and Local Taxes," from NASA Form 604 and substituting the clause set forth in § 18–11.401–2(b), in accordance with § 18–11.401–2(a).

Subpart 18–16.5—Special Contract and Order Forms

§ 18–16.500 Scope of subpart.

This Subpart 18–16.5 prescribes special forms for procuring certain supplies and services.

§ 18–16.501 Negotiated utility service contract forms.

This section prescribes the contract forms to be used for utility service contracts negotiated pursuant to the policy and procedures set forth in Subpart 18–4.50 except where such services are procured under GSA area-wide public utility contracts as provided in Subpart 18–5.8.

§ 18–16.501–50 NASA Form 550, negotiated utility service contract.

(a) *Required form.* NASA Form 550 (Negotiated Utility Service Contract) shall be used in all negotiated utility service contracts, except those for which NASA Form 550S (Negotiated Utility Service Contract—Short Form) is used, as authorized by § 18–16.501–51,a).

(b) *Instructions for completion of form.* The required information to be inserted in the various blanks on the first page is self-explanatory, except for the following:

(1) *Term of contract.* The term of the contract shall not exceed 12 months (see also § 18–7.5003–1).

(2) *Service location.* The information to be inserted in the blank designating the service location should consist of the name of the installation to which service is to be furnished and, as appropriate, any further designation; for example, "Plum Brook Facility," "Area B," or "Building 434."

§ 18–16.501–51 NASA Form 550S, negotiated utility service contract (short form).

(a) *Optional form.* NASA Form 550S (Negotiated Utility Service Contract—Short Form) may be used, without any alteration, addition, or deviation whatsoever, for a negotiated utility service contract, whenever all the following conditions exist:

(a) The utility service is taken under an established rate schedule approved by a Federal, State, or other public regulatory body;

(b) The annual cost of the utility service to be procured is $2,500 or less;

(c) No connection, termination, installation, or similar charge, except a meter deposit (or a membership fee in the case of a cooperative) required of all customers, is involved; and

(d) The supplier requires or requests the execution of a contract or application form, and/or it is deemed advantageous to the Government to negotiate and execute a contract.

(b) *Instructions for completion of form.* The required information to be inserted in the various blanks on the first page is self-explanatory, except for the following:

(1) The information to be inserted in the blank designating the service location should consist of the name of the installation to which service is to be furnished, and, as appropriate, any further designation; for example, "Plum Brook Facility," "Area B," or "Building 434."

(2) The number or other identification of the contractor's applicable rate schedule should be inserted in the blank after the words "Rate Schedule."

(3) A description of the service to be rendered should be set forth in the last blank (see NASA Forms 550A–1 through 5 and § 18–16.501–52(b)).

§ 18–16.501–52 Appendices to contract forms.

(a) *Appendix A, rate schedule.* Appendix A, the rate schedule applicable to the contract, shall consist of:

(1) The printed or otherwise published rate schedule of the contractor which has been approved or established by a Federal, State, or other regulatory body; or

(2) The rate schedule negotiated between the contractor and the Government. In either event the rate schedule shall bear the legend "Appendix A, attached to and made a part of Contract No. ------," and be entitled "Rate Schedule." Each page shall indicate its numerical order in the total number of pages comprising Appendix A, as, for example, "page 1 of 3." In addition to setting forth the rate applicable to the contract, Appendix A shall include, where applicable, any rules or regulations (whether established by the regulatory body, the contractor, or by negotiation between the contractor and the Government), which pertain to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee of not more than $1,000 to cover the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, whenever the contract period is less than six months. In all instances where a connection charge other than the fee described above is involved, the "Connection Charge" clause (§ 18–7.5003–3) and Appendix C (§ 18–16.501–52(c)) shall be included in the contract.

(b) *Appendix B, service specifications.* Appendix B, the service specifications applicable to the contract, shall consist of:

(1) NASA Form 550A–1 (Electric Service Specifications), NASA Form 550A–2 (Gas Service Specifications), NASA Form 550A–3 (Water Service Specifications), NASA Form 550A–4 (Steam Service Specifications), NASA Form 550A–5 (Sewage Service Specifications), whichever is applicable, appropriately completed; or

(2) A specially drafted attachment to the contract bearing the legend Appendix B, attached to and made a part of Contract No. ----," and the title of the appropriate service specifications.

Each page shall indicate its numerical order in the total number of pages comprising Appendix B, as, for example, "page 1 of 3." Such appendix shall set forth as a minimum as follows:

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing;

(vi) The quality of service to be rendered; and

(vii) A statement of the capacity and flow of the service.

(c) *Appendix C, connection charge schedule.* Appendix C, the schedule required whenever the contract includes the connection charge clause prescribed by § 18–7.5003–3 or the termination charge clause prescribed by § 18–7.5003–4, shall bear the legend "Appendix C, attached to and made a part of Contract No. ----," and be entitled "Connection Charge Schedule." Each page shall indicate its numerical order in the total number of pages comprising Appendix C, as, for example, "page 1 of 3." The appendix shall set forth as a minimum:

(1) A detailed description of the new facilities to be furnished by the contractor; and

(2) The agreed salvage value of such facilities.

§ 18–16.501–53 Contents of a negotiated utility service contract.

(a) *Contract using NASA Form 550.* Any contract for which § 18–16.501–50 (a) prescribes the use of NASA Form 550 shall consist of:

(1) NASA Form 550, together with any alterations and/or additions thereto (i) required by §§ 18–7.5001 and 18–

7.5002, (ii) authorized by § 18–7.5003, or (iii) approved by the Director of Procurement, pursuant to § 18–4.5006(d);

(2) An Appendix A, Rate Schedule (see § 18–16.501–52(a));

(3) An Appendix B, Service Specifications (see § 18–16.501–52(b)); and

(4) An Appendix C, Connection Charge Schedule (see § 18–16.501–52(c) and § 18–7.5003–3).

(b) *Contract using NASA Form 550S.* Any contract for which § 18–16.501–51 (a) allows the use of NASA Form 550S shall consist of:

(1) NASA Form 550S without any alteration, addition, or deviation whatsoever; and

(2) An Appendix A, which will be the established rate schedule of the contractor applicable to the contract and the rules and regulations pertaining thereto.

§ 18–16.501–54 Terms, conditions, and provisions.

Detailed instructions for use of the clauses contained in NASA Forms 550 and 550S are set forth in Subpart 18–7.50.

Subpart 18–16.6—Forms for Coordinated Procurement

§ 18–16.600 Scope of subpart.

This Subpart 18–16.6 prescribes forms to be used for the procurement of supplies or services by NASA from or through the Military Departments.

§ 18–16.601 NASA-Defense purchase request (NASA Form 523).

NASA - Defense Purchase Request (NASA Form 523) shall be used by NASA procurement offices for requesting procurement of supplies or services from all activities of the Military Departments, in accordance with § 18–5.1002.

§ 18–16.602 Acceptance of NASA-Defense purchase request.

Acceptance by the procuring department of NASA's request for supplies or services (NASA Form 523) shall be made on a DD Form 448–2, Acceptance of MIPR Form (see § 18–5.1002–3).

§ 18–16.603 Payments (Standard Form 1080).

Standard Form 1080, Voucher for Transfer Between Appropriations and/or Funds, shall be used in connection with payments to the Military Departments for supplies and services furnished to or procured for NASA (see § 18–5.1005).

Subpart 18–16.7—Contract Termination Forms

§ 18–16.700 Scope of subpart.

This subpart 18–16.7 prescribes forms for use in connection with terminated contracts (see Part 18–8).

§ 18–16.701 Notices of termination.

There are no specific forms prescribed for use in issuing termination notices. However, 32 CFR 8.801 sets forth texts of telegraphic and letter notices of termination which may be used.

§ 18–16.702 Settlement proposal forms.

The forms prescribed in this § 18–16.702 are designed for use by prime contractors but are equally suitable for use by subcontractors.

§ 18–16.702–1 Settlement proposal—inventory basis (DD Form 540).

DD Form 540 is prescribed for use by contractors in presenting claims resulting from the termination of fixed-price contracts when such claims are computed on the inventory basis.

§ 18–16.702–2 Settlement proposal—total cost basis (DD Form 541).

DD Form 541 is prescribed for use by contractors in presenting claims resulting from the termination of either fixed-price or cost-reimbursement type contracts when such claims are computed on the total cost basis.

§ 18–16.702–3 Settlement proposal for cost-reimbursement type contracts (DD Form 547).

DD Form 547 is prescribed for use by contractors in submitting claims resulting from the termination of cost-reimbursement contracts.

§ 18–16.702–4 Settlement proposal—short form (DD Form 831).

DD Form 831 is authorized for use by contractors in submitting claims resulting from the termination of fixed-price contracts when the total claim is less than $2,500.

§ 18–16.702–5 Inventory schedules (DD Forms 542, 543, 544, 545, and 832).

(a) The following forms are prescribed for use by contractors to support settlement proposals submitted on DD Form 540, 541, or 547:

(1) DD Form 542 (Inventory Schedule A—Metals in Mill Product Form) and DD Form 542C (Continuation Sheet);

(2) DD Form 543 (Inventory Schedule B—Raw Materials) and DD Form 543C (Continuation Sheet);

(3) DD Form 544 (Inventory Schedule C (Work in Process)) and DD Form 544C (Continuation Sheet); and

(4) DD Form 545 (Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools) and DD Form 545C (Continuation Sheet),

In addition, the inventory schedule forms may be used for reporting inventory in connection with adjustments under the "Changes" clause and inventory excess to completed contracts.

(b) DD Form 832 (Termination Inventory Schedule E—Short Form) is prescribed for use by contractors to support settlement proposals submitted on DD Form 831.

§ 18–16.702–6 Schedule of accounting information (DD Form 546).

DD Form 546 is prescribed for use by contractors in connection with settlement proposals (see 32 CFR 8.307–1).

§ 18–16.703 Application for partial payment (DD Form 548).

DD Form 548 is prescribed for use by contractors when applying for partial payments (see 32 CFR 8.212–1(a)).

§ 18–16.704 Notice of audit status date (DD Form 547S).

DD Form 547S is prescribed for use by disbursing officers to fix the audit status date in accordance with 32 CFR 8.405–4.

§ 18–16.705 Forms of settlement agreement.

There are no specific forms prescribed for settlement agreements. However, appropriate approved texts for settlement agreements are set forth in 32 CFR 8.806.

§ 18–16.706 Instructions for use of termination forms (DD Form 1114).

DD Form 1114 consists of instructions for the use of contract termination settlement and inventory schedule forms.

Subpart 18–16.8—Miscellaneous Forms

§ 18–16.800 Scope of subpart.

This Subpart 18–16.8 prescribes certain miscellaneous forms authorized for use in connection with the procurement of supplies and services.

§ 18–16.802 Statement of Contingent Fees (Standard Form 119).

Standard Form 119 is prescribed for use in accordance with §§ 18–1.507 through 18–1.509.

§ 18–16.803 Compliance with labor laws, regulations, and clauses.

§ 18–16.803–1 Construction Contracts (DB 11, Standard Form 1093, CB 16–19).

(a) Department of Labor Form DB 11, Request for Determination, shall be used in accordance with the provisions of § 18–12.404–2.

(b) Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act, shall be used in accordance with the provisions of § 18–12.404–9.

(c) Census Bureau Form 16–19, Construction Contract Award Notification, shall be used for reporting construction contract awards in accordance with the provisions of § 18–12.404–13.

§ 18–16.803–2 Supply Contracts (PC 12, PC 13, Standard Form 99).

(a) Department of Labor Form PC 12 (Rev. 3–49), a form letter explaining the Walsh-Healey Act, shall be furnished to the contractor in accordance with the provisions of § 18–12.603.

(b) Department of Labor Form PC 13 (Rev. 1–50), a poster, shall be furnished to the contractor in accordance with § 18–12.603.

(c) Standard Form 99 (Rev. 6–58), Notice of Award of Contract, shall be used in accordance with the provisions of § 18–12.603.

§ 18–16.804 U.S. Government Tax Exemption (Standard Form 1094, TD 1444, TD 1486).

(a) Tax Exemption Certificate (Standard Form 1094—Revised) shall be used as prescribed in § 18–11.302.

(b) Treasury Department Form 1444 (Alcohol for Use of United States) and Treasury Department Form 1486 (Specially Denatured Alcohol for Use of United States) shall be used in accordance with the provisions of § 18–11.205.

§ 18–16.805 Bond forms.

The bond forms listed below are available for use in accordance with the provisions of Part 10 of this Regulation.

(a) Bid Bond (Standard Form 24);

(b) Annual Bid Bond (Standard Form 34);

(c) Performance Bond (Standard Form 25);

(d) Annual Performance Bond (Standard Form 35);

(e) Payment Bond (Standard Form 25A);

(f) Performance Bond (Corporate Co-Surety) Standard Form 27A);

(g) Payment Bond (Corporate Co-Surety) (Standard Form 27A);

(h) Continuation Sheet (Corporate Co-Surety) (Standard Form 27B); and

(i) Affidavit of Individual Surety (Standard Form 28).

§ 18–16.810 Bidders Mailing List Application (Standard Form 129).

§ 18–16.810–1 General.

Standard Form 129, Bidders Mailing List Application shall be used in connection with the establishment and maintenance of bidders lists as prescribed by § 18–2.205.

§ 18–16.810–2 Conditions for use.

The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating on Standard Form 129 their agents to receive invitations for bids and requests for proposals.

§ 18–16.811 Security requirements (DD Forms 441 and 254).

§ 18–16.811–1 Security agreement.

DD Form 441, Security Agreement, is authorized for use in connection with the requirements of § 18–7.104–12.

§ 18–16.811–2 Security requirements checklist.

DD Form 254, Security Requirements Checklist, is authorized for use in connection with the notice required by the "Security Requirements" clause (see §§ 18–7.104–12, 18–7.204–12, 18–7.304–25, and 18–7.402–24), which is included in all contracts classified "Confidential" or higher and in other contracts the performance of which may require access to classified information or material. Instructions for preparation are included in the form.

§ 18–16.812 Release and assignment forms (NASA Forms 778, 779, 780, and 781).

The forms identified in this section are approved for use in complying with the release and assignment provisions of paragraph (f) of the allowable cost clause of a cost-reimbursement type contract (see §§ 18–7.203–4, 18–7.402–3, and 18–7.451–3) and the requirements of § 18–51.405:

(a) Contractor's Release (NASA Form 778);

(b) Assignee's Release (NASA Form 779);

(c) Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts (NASA Form 780); and

(d) Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts (NASA Form 781).

Forms differing from the above approved forms may be used if the contracting officer determines that such forms meet the applicable requirements of the clause.

§ 18–16.814 Architect-Engineer Questionnaire Form (Standard Form 251).

U.S. Government Architect-Engineer Questionnaire (Standard Form 251, June 1961 edition) may be used in accordance with the provisions of § 18–3.1503–2(a)(1). This form is designed to assure the uniform submission of experience and organizational data by architect-engineer firms.

§ 18–16.815 Contract modification forms (NASA Forms 450, 449, 449–1, and 449–2).

§ 18–16.815–1 Change Order (NASA Form 450).

(a) This form shall be used for:

(1) Any change order issued pursuant to the Changes clause of a contract;

(2) Any other unilateral contract modification, except notices of termination (see § 18–16.701), issued pursuant to a contract provision authorizing such modification without the consent of the contractor; and

(3) Administrative changes, such as the correction of typographical errors, changes in the paying office, and changes in accounting and appropriation data.

(b) NASA Form 449–1 (Contract Modification Continuation Sheet) may be used as required.

§ 18–16.815–2 Supplemental Agreement (NASA Form 449).

The following forms are authorized for use in connection with supplements to NASA contracts.

(a) NASA Form 449 (Supplemental Agreement);

(b) NASA Form 449–1 (Contract Modification Continuation Sheet); and

(c) NASA Form 449–2 (Signature Page for Supplemental Agreement).

§ 18–16.816 Identical Bid Report for Procurement (DJ 1500).

DJ 1500, Identical Bid Report for Procurement, shall be used in reporting identical bids in accordance with the requirements of § 18–1.114.

§ 18–16.850 Semiannual Report of Participating Companies (NASA Form 524).

NASA Form 524, Semiannual Report of Participating Companies, shall be used for the submission of semiannual reports by all NASA contractors who participate in the NASA Subcontracting Small Business Program, as required by § 18–1.707–5. Instructions for its use are printed on the form.

§ 18–16.851 Pre-Award Surveys (NASA Forms 585 and 586).

(a) NASA Form 585, Request for Pre-Award Survey, shall be used in accordance with the instructions contained in § 18–1.905–52.

(b) NASA Form 586, Financial Data Sheet, shall be used as required by § 18–1.905–52.

§ 18–16.852 Procurement Request (NASA Form 404).

NASA Form 404, Procurement Request, shall be used for initiating procurements in accordance with § 18–3.850.

§ 18–16.853 Request for Proposals (NASA Form 529).

NASA Form 529, Request for Proposals in Soliciting Proposals for Major NASA Research and Development Contracts, is authorized for use as a general guide in preparing requests for proposals for major research and development contracts in accordance with § 18–3.854.

§ 18–16.854 Request for Contractor Clearance (NASA Form 446).

NASA Form 446, Request for Contractor Clearance, shall be used in accordance with NASA Management Instruction 24–3–1, if the proposed procurement will involve access to classified information.

§ 18–16.855 Nonpersonal Services Contracts (NASA Form 610).

The General Provisions contained in NASA Form 610, together with a Cover Page (NASA Form 437), a Schedule, and a Signature Page (NASA Form 437–1), are authorized for use in contracts for nonpersonal services.

§ 18–16.856 Contractor Financial Management Report (NASA Form 533).

NASA Form 533, Contractor Financial Management Report, is designed for use by the contractor in providing certain financial projections and experience through the reporting period. NASA Management Instruction 6–2–4A sets forth details for use of the form. Instructions for completing NASA Form 533 are printed on the reverse of the form.

§ 18–16.857 Bill of Material (DD Forms 346 and 347).

DD Form 346, Raw (Basic Process) and Semi-Fabricated Stock Form, and DD Form 347, Bill of Material—Subcontracted Parts—Purchased Parts—Government-Furnished Property, are authorized for use to describe the materials required for furnishing the supplies to be

delivered under contract, in accordance with § 18–7.105–6.

§ 18–16.858 Tax forms.

(a) *Special Fuels Tax (Standard Forms 1169, 1103).* Treasury Department Form 720 (Quarterly Federal Excise Tax Return) shall be used in accordance with § 18–11.101–5 in making quarterly payments of tax on tax-free special fuels used for a taxable purpose.

(b) *Transportation of persons tax.* Standard Form 1169, Transportation Request, is designed for obtaining exemption from tax on transportation of persons, in accordance with § 18–11.202(b).

(c) *Transportation of property tax.* Standard Form 1103, U.S. Government Bill of Lading, is authorized for use to obtain exemption from tax on transportation of property, in accordance with § 18–11.202(b).

§ 18–16.859 Letter contracts.

§ 18–16.859–1 General.

This § 18–16.859 prescribes the forms to be used in connection with letter contracts contemplating cost-reimbursement type or fixed-price type definitive contracts.

§ 18–16.859–2 Cost-reimbursement type letter contract.

The following forms are prescribed for use in letter contracts contemplating cost-reimbursement type definitive contracts:

(a) Cover Page—NASA Form 551;

(b) Letter of Transmittal—NASA Form 551–1;

(c) Schedule Format—NASA Form 551–2;

(d) General Provisions—NASA Form 551–3; and

(e) NASA Form 417 or 418, as appropriate, in accordance with the instructions contained in Article V of the Schedule Format—NASA Form 551–2. In addition, the prescribed clauses set forth in NASA Form 417 or 418 shall be modified or deleted and additional clauses, applicable to the kinds of such contracts for which such forms were designed, shall be included in the contracts as required or authorized by §§ 18–7.402 through 18–7.404, or §§ 18–7.203 through 18–7.205, respectively. Also, see instructions contained in Article Vb of the Schedule Format—NASA Form 551–2.

§ 18–16.859–3 Fixed-price type letter contract.

The following forms are prescribed for use in letter contracts contemplating fixed-price type definitive contracts:

(a) Cover Page—NASA Form 551;

(b) Letter of Transmittal—NASA Form 551–1;

(c) Schedule Format—NASA Form 551–2;

(d) General Provisions—NASA Form 551–3, except that Clause 5, "Termination," shall be deleted and the "Termination" clause set forth in § 18–8.701(b) shall be substituted therefor; and

(e) NASA Form 247, or Standard Form 32 and NASA Form 250, as appropriate, in accordance with the instructions contained in Article V of the Schedule Format—NASA Form 551–2. In addition, the prescribed clauses set forth in NASA Form 247, Standard Form 32, or NASA Form 250 shall be modified or deleted and additional clauses, applicable to the kinds of such contracts for which such forms were designed, shall be included in the contract as required or authorized by §§ 18–7.302 through 18–7.304, or §§ 18–7.102 through 18–7.108, respectively. Also, see instructions contained in Article Vb of the Schedule Format.

§ 18–16.859–4 Letter contract forms.

(a) *Format cover page for letter contracts (NASA Form 551, April 1962).*

Contract No. ----------

LETTER CONTRACT

BETWEEN

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

AND

(Contractor)

Contract for:
Installation:
Office to Make Payment:
is designated as the office to make payments, if any, in accordance with this contract.
The sums to be expended by the Government hereunder are chargeable to the following appropriations, the available balances of which are sufficient to cover the same:
The office having overall administrative responsibility for this contract is:
Purchase Request No:
Negotiator:
Priority Rating ---------- is certified for national defense use under DMS Regulation No. 1
Program:
This instrument has been negotiated pursuant to 10 U.S.C. 2304(a)( )

(b) *Format letter of transmittal for letter contracts (NASA Form 551–1, April 1962).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Date: ----------
Letter Contract
Contract No: ----

To:
Gentlemen:

1. This letter, when accepted by you, will constitute a Letter Contract bearing the contract number above indicated, whereby you, as Contractor, agree to furnish to the Government the supplies or services set forth in the attached Contract Schedule in accordance with the terms, conditions, and administrative provisions set forth in the Schedule and in the current edition of the NASA Forms identified in the Enclosures listed below, and such NASA Forms, if any, as are referenced therein, all of which are attached hereto and made a part hereof. This letter, Schedule, and the Forms are submitted to you in quadruplicate.

2. If you agree to the terms set forth in the attached Schedule and in the NASA Forms listed in the Enclosures, please indicate your acceptance by signing the original and two copies of this Letter in the place provided in the lower left corner and return the executed copies to the Contracting Officer who signed this letter on behalf of the United States.

3. It is understood by your acceptance hereof that you will undertake, without delay, to enter into negotiations with the National Aeronautics and Space Administration looking to the execution of a definitive contract and to furnish all cost and price information requested by the Contracting Officer. The form and provisions of the definitive contract which the National Aeronautics and Space Administration intends to use as the basis for negotiation are set forth in the Schedule.

3 Enclosures
1. Schedule—NASA Form 551–2
2. NASA Form 551–3
3. NASA Form ------

THE UNITED STATES OF AMERICA
By----------

(Contracting Officer)

(c) *Schedule format for letter contracts (NASA Form 551–2, September 1962).*

SCHEDULE FORMAT

Article I—*Statement of work:*
a. (Include a complete description of the supplies to be furnished or work to be done in the same detail as in a definitive contract.)
b. (Include all pertinent specifications or references thereto in the same detail as in a definitive contract.)

Article II—*Delivery or performance schedule:* (Self-explanatory, but state, by item, whether delivery will be f.o.b. origin or transportation prepaid to destination. If f.o.b. origin, include statement "for shipment ----------" on G.B.L.)

Article III—*Consideration and payment:*
a. The maximum amount for which the Government will be liable if this Letter Contract is terminated is $---------.
b. Contractor's invoices or vendor's shipping documents used as invoices shall be made out to the Office designated to make payment marked, "Attention: Fiscal Officer," and delivered to the Contracting Officer. Payment will be made as provided in the Payment clause of NASA Form 551–3, except as otherwise stated below:
c. (Set forth any prices or rates of payment which the Government and Contractor may have agreed to or which the Government is offering to pay for supplies to be delivered or services to be performed under this Letter Contract or for identified portions of such work or services.)

Article IV—*Inspection and acceptance:* (Name the place where inspection is to be made and specify details concerning inspection and acceptance in the same detail as in a definitive contract.)

Article V—*Clauses incorporated:*
a. There are incorporated by reference in this Letter Contract all the clauses contained in NASA Form -------- (--------) except for the following clauses, which are to be deleted for the purpose of this Letter Contract:
(i) (Where a fixed-price R & D contract is contemplated, insert NASA Form 247 and date of the current form in the blank above, and list as the clauses to be deleted "Payments" and "Termination for convenience of the Government."
(ii) (Where a fixed-price supply contract is contemplated, the reference in the blank above should be to Standard Form 32 and NASA Form 250 and dates to the current forms, and list as the clauses to be deleted "Payments" and "Termination for Convenience of the Government"; or
(iii) Where a cost-remburement type contract is contemplated, insert NASA Form 417 or 418 and the date of the current form, as appropriate, in the blank above, and list as the clauses to be deleted "Limitation of Cost," "Allowable Cost, Fixed-Fee, and Payment," "Termination," and "Limitation on Withholding of Payments.")
b. (Identify and reference any other clause appropriate to the contract and attach such clause to the Schedule.)

Article VI—*Definitive contract:*

a. The definitive contract will be negotiated and executed on or before _____, unless such date is extended in writing by the Contracting Officer.

b. It is contemplated that the definitive contract will be negotiated on the basis of NASA Form _____ (_____) and such additional clauses as are appropriate to the subject matter of this contract. However, the parties are not hereby committed to the negotiation of this type of contract.

(d) *General provisions for letter contracts (NASA Form 551–3, 1963).*

GENERAL PROVISIONS FOR LETTER CONTRACTS

INDEX OF CLAUSES

1. Direction to proceed.
2. Contract clauses incorporated.
3. Authority to obligate funds.
4. Payments.
5. Termination.

1. *Directions to proceed:* Except as otherwise expressly provided to the contrary in this Letter Contract, the Contractor is directed, upon his acceptance to this Letter Contract, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services called for herein, and to pursue such work with all diligence to the end that the supplies or services called for under Article I of the Schedule will be delivered or performed in accordance with Article II of the Schedule and all other terms of this Letter Contract.

2. *Contract clauses incorporated:* The contract clauses set forth in the NASA Contract form identified in the Schedule, subject to the alterations in such form shown in the Schedule, and including any other clauses referenced in the Schedule as applicable to this Letter Contract and attached to the Schedule, are hereby incorporated into this Letter Contract and made a part hereof.

3. *Authority to obligate funds:* The maximum amount for which the Government shall be liable if this contract is terminated is specified in the Schedule, and any expenditure or obligation by the Contractor in excess of that amount, in furtherance of performance hereunder, shall be at the Contractor's own risk.

4. *Payments:*

(a) If this Letter Contract is on a fixed-price basis, and is governed generally by the provisions of a fixed-price contract form (SF–32 and NASA Form 250, or NASA Form 247), the Government will pay to the Contractor, not to exceed the maximum amount specified in Article IIIa of the Schedule, upon the submission of proper invoices or vouchers, the prices, if any, specified in Article III of the Schedule for supplies delivered and accepted or services rendered and accepted, less deductions, if any, provided for in this Letter Contract. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government.

(b) If this Letter Contract is on a cost-reimbursement basis and is governed generally by the provisions of a cost-reimbursement type contract form (NASA Form 417 or 418) referenced in the Schedule, the Government will pay to the Contractor, not to exceed the maximum amount specified in Article IIIa of the Schedule, upon the submission of proper invoices or vouchers, his costs for the performance of this contract determined by the Contracting Officer to be allowable in accordance with (i) Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this Letter Contract, and (ii) any special provisions concerning allowable costs or payment set forth in the Schedule.

(c) Nothing shall be paid under this Letter Contract to the Contractor for profit or fee, except as provided in the Termination clause of this Letter Contract.

5. *Termination:*

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(i) whenever the Contractor shall default in performance of this Letter Contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Letter Contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i) above, or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this Letter Contract relating to excusable delays, the Notice of Termination shall be considered to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under this Letter Contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Letter Contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Letter Contract;

(vi) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Letter Contract, for the cost of which the Contractor has been or will be reimbursed under this Letter Contract;

(vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *Provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter Contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this Letter Contract which is in the possession of the Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining the amount of any items of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Part 8 of the NASA Procurement Regulation as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same, *provided* that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than one (1) year from the

effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (1) year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by NASA regulations in effect on the date of the execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by NASA regulations in effect as of the date of execution of this Letter Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) or (b)(i) hereof, such amount or amounts shall not include any allowance for fee. In the event of any termination pursuant to paragraph (b)(ii) hereof, such amount or amounts may include a reasonable allowance for fee, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum amount specified in Article IIIa of the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e) above, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by NASA regulations in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the NASA Procurement Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) or (b)(i) hereof, no allowance for fee shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) or (b)(i) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or

(ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted:

(i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(ii) any claim which the Government may have against the Contractor in connection with this Letter Contract; and

(iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Letter Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

§ 18–16.860 Processing payments under cost-reimbursement contracts.

The following forms are authorized for processing payment under cost-reimbursement type contracts in accordance with Subpart 18–51.4.

(a) NASA Form 456, Notice of Costs Suspended and/or Disapproved;

(b) NASA Form 456–1, Notice of Costs Suspended and/or Disapproved Continuation Sheet;

(c) DD Form 396, Notice of Costs Suspended and/or Disapproved;

(d) Standard Form 1034, Public Voucher for Purchases and Services Other than Personal;

(e) Standard Form 1034A, Public Voucher for Purchases and Services Other than Personal—Memorandum Copy;

(f) Standard Form 1035, Public Voucher for Purchases and Services Other than Personal Continuation Sheet; and

(g) Standard Form 1035A, Public Voucher for Purchases and Services Other than Personal Continuation Sheet—Memorandum.

§ 18–16.861 Withholdings under Davis-Bacon Act (S.F. 1093).

Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act, shall be used in accordance with § 18–12.404–9.

§ 18–16.862 Unitary Plan Wind Tunnel Facilities (NASA Form 362).

NASA Form 362, Agreement for Use of NASA Unitary Plan Wind Tunnel Facilities, shall be used in connection with the use of the NASA unitary plan wind tunnel facilities for company projects. The form shall be executed by authorized representatives of NASA and the company on all company projects, as defined in NASA Management Instruction 7–8–1. The symbol "NAS (UP)" shall be placed on each agreement, followed by the numerical designation of the field installation, and consecutive numbers assigned (for example, "NAS (UP)–1"). Billings shall be rendered by and payments made to the NASA laboratory concerned in accordance with applicable fiscal regulations.

Subpart 18–16.9—Procurement Action and Status Reports

§ 18–16.900 Scope of subpart.

This Subpart 18–16.9 describes procurement action and status reports required by NASA Headquarters from all NASA procurement offices.

§ 18–16.901 Purpose.

The reports prescribed herein are designed to provide records and statistics necessary for procurement management purposes and to serve as a basis for required recurring and special reports to the President, the Congress, the General Accounting Office, the Small Business Administration, and other Federal agencies.

§ 18–16.902 Applicability.

Individual Procurement Action Reports (NASA Form 507) and Procurement Status Reports (NASA Form 561) shall be prepared by all offices at Headquarters and NASA field installations charged with the responsibility for making and administering purchases and contracts.

§ 18–16.903 Definition.

(a) "Procurement actions" means contractual actions to obtain supplies, services, or construction which obligate or de-obligate funds, including:

(1) Preliminary contractual instruments, e.g., letter contracts;

(2) Definitive contracts (including notices of award);

(3) Purchase orders;

(4) Job orders;

(5) Task orders;

(6) Delivery orders; and

(7) Any other orders against existing contracts, including debit and credit actions that modify a contract, such as amendments, change orders, supplemental agreements, cancellations, and terminations.

The term does not include contracts which do not obligate a firm total dollar amount or do not name a fixed quantity, such as indefinite delivery type contracts. However, orders against such contracts shall be reported as procurement actions.

(b) "Proposed procurements" means purchase requests received by NASA procurement offices to issue orders and enter into contracts.

(c) "Procurement status" means any of the 11 steps involved in the processing of a proposed procurement as set forth for columns G through Q of § 18–16.904–2(c)(2).

§ 18–16.904 Reports required.

§ 18–16.904–1 Individual procurement action report (NASA Form 507).

Pending the formal issuance of instructions in this Chapter, Individual Procurement Action Reports (NASA Form 507 (6–63)) shall be prepared and submitted in accordance with the instructions contained in the letter from NASA Headquarters addressed to procurement officers, dated June 20, 1963; subject, "Revised Individual Procurement Action Report (NASA Form 507)."

§ 18–16.904–2 NASA Procurement Status Report (NASA Form 561).

(a) *Preparation.* NASA Form 561 (or work sheets, see paragraph (b) of this section) shall be prepared monthly showing the procurement status of all proposed procurements which may result in purchase orders or contracts of $500,000 or more by all procurement offices at NASA Headquarters and NASA field installations. The report shall include proposed procurements of $500,000 or more which represent proposed modifications of existing contracts or purchase orders and shall be prepared in accordance with paragraph (c) of this section.

(b) *Submission.* (1) NASA Form 561 may be used for submitting the report required in paragraph (c) of this section. However, copies of work sheets maintained by the procurement offices may be submitted in lieu of NASA Form 561 provided that all of the data required by paragraph (c) of this section is included on the work sheets or on attachments thereto.

(2) Two copies of the report shall be submitted to the Office of Procurement (Code KDS) in time to arrive by the tenth of the month following the month for which the report is being made. A negative report shall be submitted where a procurement office has no action to report for a given month.

(3) Classified information required by a report shall be transmitted under separate cover in accordance with NASA Management Instruction 24–1–1.

(c) *Instructions for preparation of NASA procurement status report (NASA Form 561).*—(1) *General.* (i) NASA Form 561 (or installation work sheets) shall be used by NASA procurement offices for each monthly procurement status report. Each report shall list (1) all previously reported proposed procurements on which procurement action had not been reported as completed in the previous month's report, and (2) all new proposed procurements of $500,000 or more received during the month, whether or not procurement actions on such new procurements had been completed by the end of the month.

(ii) NASA Form 561 (paragraph (d) of this section) has been developed so that retyping of the data listed on previous reports is not required; i.e., copies of the previous report may be submitted and proposed procurements on which action had been reported as completed in the previous report may be lined out and new proposed procurements may be added.

(iii) The individual line items on the report shall be listed in the order most convenient to the respective procurement offices.

(iv) "Proposed procurements" means purchase requests received by NASA procurement offices to issue orders and enter into contracts.

(v) "Procurement status" means any of the 11 steps involved in the processing of a proposed procurement as set forth for columns G through Q of subparagraph (2).

(vi) NASA Form 561 (or installation work sheets) shall be submitted to NASA Headquarters in accordance with § 18–16.904–2(b).

(2) *Detailed Instructions.*

Column	Caption	Explanation of Entries
A	Purchase Request No.	Enter the number of the purchase request identifying the proposed procurement. Procurement offices utilizing requisition numbers to identify proposed procurements may enter such numbers in lieu of the purchase request numbers.
B	Existing Contract No./Modification No.	If the proposed procurement represents a modification of an existing contract or purchase order, enter the number of the contractor purchase order in the top block and the number of the modification in the block below.
C	Program/Project	Enter the number(s) of the program(s) and project(s) from which the proposed procurement is to be funded. These numbers will be obtained from the NASA agency-wide coding structure (Financial Management Manual Vol. 4). If the proposed procurement is to be funded from more than one program or project, list all applicable numbers, using additional lines as necessary.
D	Description	Enter a brief description of the proposed procurement.
E	Cost/Committed	If the proposed procurement involves incremental funding, enter the estimated total cost of the contract in the top block. Enter the commitments and the last 2 digits of the fiscal year in which the committed funds were appropriated in the second block. If the proposed procurement is to be funded from more than one program or project, enter the commitments against each program or project.
F	Advertised or negotiated	If the proposed procurement is to be formally advertised, enter the letter "A"; if it is to be negotiated, enter the letter "N."
G–Q		Columns G through Q pertain to steps in the procurement process. In each column enter the month and day, in numerals, when the designated step was accomplished. If the last action had been accomplished more than a year prior to the date of the report, enter also the last 2 digits of the calendar year. Cross out steps not applicable to a specific proposed procurement. Use footnotes to modify columnar designations, where required. In some instances, completion of procurement action may be delayed by reasons not within the control of procurement personnel. When applicable, use the following code designations and enter the applicable letter in the column immediately following the last step accomplished. P—Awaiting action by program offices. F—Awaiting funding action. C—Awaiting contractor action. When, in the judgment of the respective procurement office, a procurement action is requiring more than a normal period of processing time for reasons other than those stated above, provide an explanation on attached sheets.
G	Received from technical programs offices.	Enter the date only if the purchase request was received by the procurement office prior to the date necessary funds had been committed.
H	Received from fiscal office	Enter the date the purchase request was received by the procurement office with necessary funds committed.
I	D&F or porcurement plan approved.	If both actions are to be taken with respect to a specific proposed procurement, enter only the date the last required action was accomplished.
J	IFB or RFP issued	Self-explanatory. (For modifications, use this column to indicate date quotation was requested. For actions placed with or through other Government agencies, use this column to indicate date purchase request or order was forwarded to the Government agency.)
K	Bid or proposal opened—scheduled/actual.	Enter the scheduled date in the top block. Enter the actual date in the block below. (For modifications, enter in the lower block the date the quotation was received.)
L	Contractor Selected	Enter the date. Also enter the name and address (city and State only) of the contractor in column(s).
M	Letter Contract Issued	Self-explanatory.
N	Notice of Award Issued	Self-explanatory.
O	Definitive Contract Mailed to Contractor for Signature.	Self-explanatory.
P	Approved by Headquarters	Enter the date when approval is required.
Q	Signed Copies Distributed	Self-explanatory. (For actions placed with or through other Government agencies, use this column to indicate date acceptance was received.)
R	New Contract No./Amount Obligated.	Enter in the top block the number of the contract or purchase order. Enter in the block below the amount obligated. If the contract or purchase order is funded from more than one program or project (see column E), enter the obligations against each program or project.
S	Contractor	Enter the name and address (city and State) of the contractor.

§ 18–16.904–3 Geographic distribution of NASA subcontracts (NASA Form 667).

In order to obtain information relating to the geographic distribution of subcontracts awarded under certain NASA contracts, the following clause will be inserted in all NASA contracts of $500,000 or more:

REPORT ON NASA SUBCONTRACTS (JANUARY 1964)

(a) The Contractor agrees to submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code: KDS), Washington, D.C., substantially as follows with respect to each subcontract or modification thereof exceeding $10,000 as soon as possible after execution thereof:

(i) the name and address of the prime contractor and the NASA prime contract number;

(ii) the name and address of the subcontractor;

(iii) whether the subcontractor is a large or small business concern;

(iv) whether the type of effort being performed involves research and development;

(v) a brief description of the subcontract work;

(vi) the amount of the subcontract; and

(vii) the principal location where the subcontract work is to be performed, if known.

(b) The term "subcontract" as used herein means procurement in excess of $10,000 by the Contractor or first-tier subcontractor of articles, materials, or services entering into the performance of this contract, except purchases, regardless of amount, of stock items, materials, or services which cannot be specifically identified with this contract.

(c) The term "research and development" as used herein means basic and applied research, and design and development of prototypes and processes to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes and (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.

(d) The Contractor further agrees to insert the provisions of paragraphs (a), (b) and (c) of this Clause in each subcontract in excess of $50,000. The Contractor will instruct his subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code: KDS), Washington, D.C., and will provide his subcontractors with the number of the NASA prime contract.

PART 18–17—EXTRAORDINARY CONTRACTUAL ADJUSTMENTS PROCEDURE

Sec.

18–17.000 Scope of part.
18–17.101 Authority.
18–17.102 General policy.
18–17.103 Standards for deciding cases.
18–17.103–1 General.
18–17.103–2 Amendments without consideration.
18–17.103–3 Mistakes.
18–17.103–4 Informal commitments.
18–17.104 Limitations upon deciding cases.
18–17.105 Procedures for filing requests.
18–17.105–1 Filing requests.
18–17.105–2 Form of requests.
18–17.105–3 Additional facts and evidence.
18–17.106 Processing contractor requests.
18–17.106–1 Investigation.
18–17.106–2 Submission of requests to the contract adjustment board.
18–17.106–3 Action by contract adjustment board.
18–17.107 Implementation of board's decision.
18–17.108 Contractual requirements.
18–17.109 Records and reports.
18–17.110 Interdepartmental coordination.

AUTHORITY: The provisions of this Part 18–17 issued under 42 U.S.C. 2473(b)(1).

§ 18–17.000 Scope of part.

This Part 18–17 establishes standards and procedures for the disposition of requests for extraordinary contractual adjustments by contractors of the National Aeronautics and Space Administration (hereinafter referred to as "NASA" or the "Administration") pursuant to the Act of August 28, 1958 (Public Law 85–804; 50 U.S.C. 1431–35) (hereinafter referred to as "the Act"), and Executive Order No. 10789 (CFR Comp. 1954–1958) (hereinafter referred to as "the Executive Order"). It does not extend to advance payments or the so-called "residual powers" under the Act.

§ 18–17.101 Authority.

(a) The Act empowers the President to authorize Departments and agencies exercising functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense.

(b) The Executive Order authorizes the Administrator of NASA (hereinafter referred to as "the Administrator"), to exercise the authority conferred by the Act, and to prescribe regulations for the carrying out of such authority.

(c) NASA Management Instruction 2–4–4 establishes the Contract Adjustment Board (hereinafter referred to as "the Board") to consider and dispose of requests for extraordinary contractual adjustments by NASA contractors.

§ 18–17.102 General policy.

The authority conferred by the Act shall be utilized primarily as an aid to procurement but shall not be utilized so as to encourage carelessness and laxity on the part of contractors or NASA personnel, nor be relied upon by NASA where other adequate legal authority exists. The actions authorized under the Act shall be processed as expeditiously as practicable but with the care, restraint, and sound judgment appropriate to the exercise of such extraordinary authority.

§ 18–17.103 Standards for deciding cases.

§ 18–17.103–1 General.

The mere fact that losses occur under a Government contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Act. Whether, in a particular case, appropriate action (such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment) will facilitate the national defense is a matter of sound judgment to be made on the basis of all of the facts of the case. Although it is obviously impossible to predict or enumerate all types of cases with respect to which action may be appropriate, examples of cases or types of cases where action may be proper are set forth in §§ 18–17.103–2, 18–17.103–3, and 18–17.103–4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may result in a denial of the request. These examples are not intended to exclude other cases where the

Board determines that the circumstances warrant action.

§ 18–17.103–2 Amendments without consideration.

(a) Where an actual or threatened loss under a Government contract, however caused, will impair the productive ability of a contractor whose continued operation as a source of supply is found to be essential to the national defense, the contract may be adjusted, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a Govenment contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus, where such Government action, although not creating any liability on the part of the Government, increases the cost of performance, considerations of fairness may make some adjustment in the contract appropriate.

§ 18–17.103–3 Mistakes.

A contract may be amended or modified to correct or mitigate the effect of a mistake. Examples of cases where such action may be appropriate include the following:

(a) A mistake or ambiguity which consists of the failure to express or to express clearly in a written contract the agreement as both parties understood it;

(b) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(c) A mutual mistake as to a material fact.

Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

§ 18–17.103–4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an official of NASA and relying in good faith upon the apparent authority of the official to issue such instructions, has arranged to furnish or has furnished property or services to NASA or to a Government contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

§ 18–17.104 Limitations upon deciding cases.

(a) The Act is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The execution of any contract in violation of existing law relating to limitation of profit or fees;

(3) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(4) The waiver of any bid, payment, performance, or other bond required by law;

(5) The amendment of a contract negotiated under 10 U.S.C. 2304(a)(15) to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(6) The formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

(b) No contract, amendment, or modification shall be entered into under the authority of the Act:

(1) Unless a finding is made that the action will facilitate the national defense;

(2) Unless other legal authority in the Administration is deemed to be lacking or inadequate;

(3) Unless the request therefor has been filed before all obligations have been discharged and final payment made; and

(4) Except within the limits of the amounts appropriated and the statutory contract authorization.

§ 18–17.105 Procedures for filing requests.

§ 18–17.105–1 Filing requests.

Any person or company seeking an adjustment under the standards set forth in § 18–17.103 (hereinafter called the "contractor") may file a request in duplicate with the cognizant contracting officer or his duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the Board or the Administrator for forwarding to the cognizant contracting officer.

§ 18–17.105–2 Form of requests.

The contractor's request shall normally consist of a statement, dated and signed by the contractor, containing as a minimum the following information:

(a) A chronological narrative of the essential facts, showing in detail the chain of events leading up to the request;

(b) The contractor's conclusions based on such facts, showing in terms of the standards set forth in § 18–17.103 and the limitations set forth in § 18–17.104 why the contractor considers himself entitled to the adjustment requested;

(c) The precise adjustment requested, showing how it was formulated or computed and the consequences of granting or denying the request, including whether any proceeds from the request, if granted, will be subject to any assignment or other transfer, and to whom;

(d) If a written contract is involved, a statement of the contractor's understanding of why the subject matter of the request cannot now and could not at the time it arose be disposed of under the terms of the contract itself;

(e) If a written contract is involved, a complete copy of or a brief description of the contract, indicating the dates of execution and amendments thereto, the items being procured, the price or prices, the delivery schedule or revisions thereof, and such other special contractual provisions as may be relevant to the request;

(f) If a written contract is involved, whether all obligations, including final payment under the contract have been discharged; and

(g) Whether the contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other agency of the Government, or anticipates doing so.

§ 18–17.105–3 Additional facts and evidence.

(a) *General.* The cognizant contracting officer or the Contract Adjustment Board may, where considered pertinent, request the contractor to furnish additional facts and evidence in support of his request, of the nature set forth in this paragraph. In complying with such requests, the contractor may also submit other statements and evidence which he may consider helpful to his case:

(1) The best evidence available to the contractor in support of any facts alleged by the contractor, including contemporaneous memoranda, correspondence, affidavits, and any other material tending to establish matters of fact;

(2) A history of performance indicating when work under the contracts or commitments was begun, the progress made to the present, and exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof;

(3) A statement of payments received, payments due, and payments yet to be received or to become due, including advance and progress payments and amounts withheld by the Government, and formation as to other obligations of the Government, if any, which are yet to be performed under the contract;

(4) A statement giving a detailed analysis of the monetary elements of the request, including precisely how the actual or estimated dollar amount of the request was arrived at, the effect of approval or denial on the contractor's profits before Federal income taxes, and whether the costs for which reimbursement is requested have been included as a part of his gross costs in statutory renegotiation proceedings, together with the contractor's renegotiation status for the relevant years;

(5) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, including such additional financial data as is necessary to explain fully and to support the monetary elements of the request for adjustment;

(6) A list of persons (in the employ of the Government, in the employ of the contractor, or otherwise connected with the contract) who have some factual knowledge of the subject matter, including, where possible, the name, office or title, address, and telephone number of each such person;

(7) A statement and evidence of steps taken to mitigate loss and reduce claims to a minimum; and

(8) Such other statements or evidence as may be requested.

(b) *Amendments without consideration under § 18–17.103–2(a).* In addition to the facts and evidence enumerated in paragraph (a) of this section, where a request involves possible amendment without consideration, and "essentiality" is a factor, the contractor may be asked to furnish:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if enabled to complete, broken down between costs accrued to date of request and run-out costs, and between costs for which the contractor has made payment and those for which he is indebted at the time of the request;

(3) A statement and evidence of the contractor's estimate of the final price of the contracts involved, giving effect to all escalation, changes, extras, and the like, known or contemplated by the contractor;

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts in question, other than those stated in response to subparagraph (3) of this paragraph;

(5) An estimate of the contractor's total profit or loss under the contracts involved if enabled to complete at the final contract price (see subparagraph (3) of this paragraph) broken down between profit or loss to date and run-out profit or loss;

(6) An estimate of the total profits from other Government business and all other sources during the period from the date of the first contract involved to the estimated date of completion of all the contracts involved;

(7) A statement of the amount of any tax refunds and an estimate of those anticipated during or for the period from the date of the first contract involved through the estimated completion date of all the contracts involved;

(8) A statement in detail as to efforts the contractor has made to obtain funds from commercial sources to enable him to complete performance of the contracts involved;

(9) A statement of the minimum amount necessary as an amendment without consideration to enable the contractor to complete performance of the contracts involved, and the detailed basis for that amount;

(10) An estimate of the time required to complete each contract if the request is granted;

(11) A statement of the factors which have caused the loss under the contracts involved;

(12) A statement as to the course of events anticipated if the request is denied;

(13) Balance sheets, preferably certified by a certified public accountant, as of the end of the contractor's fiscal year first preceding the date of the first contract, as of the end of each subsequent fiscal year, as of the date of the request, and projected as of the date of completion of all the contracts involved, assuming the contractor is enabled to complete the contracts at the final prices estimated pursuant to subparagraph (3) of this paragraph, together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated, and by affiliates, and should show all transactions between the contractor and his affiliates, stockholders, and partners including loans to the contractor guaranteed by any stockholder or partner; and

(14) A list of all salaries, bonuses, and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration under § 18–17.103–2(b).* In addition to the facts and evidence enumerated in paragraph (a) of this section, where a request involves possible amendment without consideration because of Government action, and "essentiality" is not a factor, the contractor may be asked to furnish:

(1) A detailed statement of the precise Government action which the contractor considers caused a loss under the contract, with evidence to support each essential fact;

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(3) The estimated total loss suffered under the contract, with detailed supporting analysis; and

(4) The estimated loss resulting from the Government action, with detailed supporting analysis.

(d) *Correction of mistakes under § 18–17.103–3.* In addition to the facts and evidence enumerated in paragraph (a) of this section, where a request involves possible correction of a mistake, the contractor may be asked to furnish:

(1) A statement and evidence of the precise mistake or error that was made, the ambiguity that exists, or the misunderstanding that arose, showing of what it consisted and how it occurred, and the intention of the parties;

(2) A statement explaining when the mistake was discovered, when notice of mistake was given to the contracting officer, and whether given before completion of work under, or the effective date of termination of, the contract;

(3) An estimate of loss or profit under the contract with detailed supporting analysis; and

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalization of informal commitments under § 18–17.103–4.* In addition to the facts and evidence enumerated in paragraph (a) of this section, where a request involves possible formalization of an informal commitment, the contractor may be asked to furnish:

(1) Copies of any written instructions or assurances, or a statement under oath of any oral instructions or assurances made to the contractor, with identification of the Government officer or official making such statement;

(2) A statement as to when the property or services were furnished or arranged to be furnished, and to whom;

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances which led him so to rely, and that the contractor intended, at the time of performing the work, to be compensated directly for it by the Government and did not anticipate recovery of the costs in some other way;

(4) A cost breakdown supporting the amount claimed as a fair compensation for the work performed; and

(5) A statement and evidence of why it was impracticable to provide for the work performed in an appropriate contractual instrument.

§ 18–17.106 Processing contractor requests.

§ 18–17.106–1 Investigation.

Upon receipt of a contractor's request for an extraordinary contractual adjustment, the cognizant contracting officer shall be responsible for making a thorough investigation of all facts and issues relevant to the request. Facts and evidence shall be obtained from contractor and Government personnel, including signed statements of material facts within the knowledge of individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts. The investigation shall establish the facts essential to meeting the standards required for a decision on the request.

§ 18–17.106–2 Submission of request to the Contract Adjustment Board.

(a) *Statements and information to board.* (1) After completing the investigation of the facts and issues relevant to the contractor's request, the cognizant contracting officer shall forward the request to the Chairman, Contract Adjustment Board, NASA Headquarters, and shall state the following in his forwarding letter:

(i) The nature of the case; and

(ii) The disposition recommended for the request, and, if contractual action is recommended, the opinion of the contracting officer that such action will facilitate the national defense.

(2) The forwarding letter shall enclose the contractor's request, and all

material submitted by the contractor in support of such request, together with such additional material as the contracting officer has obtained from Government sources or personnel in the course of his investigation of the facts and issues relevant to the request. The contracting officer's forwarding letter and all enclosures shall be submitted in duplicate. Any classified information included in the material forwarded shall be identified as such.

(b) *Amendments without consideration under § 18–17.103–2(a).* Where an amendment without consideration under the standards of § 18–17.103–2(a) is recommended by the cognizant contracting officer, the forwarding letter shall include, in addition to the statements and information described in paragraph (a) (1) and (2) of this section, a statement of the contracting officer's findings as to:

(1) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

(2) The importance to the Government of the performance of the contract by the contractor and the importance of the contractor to the national defense;

(4) The forecast of future contracts with the contractor; and

(5) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(c) Formalization of informal commitments under § 18–17.103–4. Where the formalization of an informal commitment under the standards of § 18–17.103–4 is recommended by the cognizant contracting officer, the forwarding letter shall include, in addition to the statements and information described in paragraph (a) (1) and (2) of this section, a statement that the contracting officer has determined that at the time the informal commitment was made, it was impracticable to use normal procurement procedures.

§ 18–17.106–3 Action by Contract Adjustment Board.

(a) *Investigation.* Upon receipt of a request which is forwarded by the cognizant contracting officer, the Board, acting through its Counsel, may make such further investigation of the facts and issues involved in the request, and obtain such additional facts and evidence relating to the request, either from the contractor or the contracting officer, or others, as is necessary to make a determination as to the contractor's entitlement to the relief requested, or to other equitable relief.

(b) *Decision.* The Board, acting in accordance with its own procedures, will render its decision on a request as expeditiously as practicable. A Memorandum of Decision disposing of the case shall be prepared for the signature of the Chairman of the Board, and shall be dated and contain the following information:

(1) The name and address of the contractor, the contract identification, and the nature of the request;

(2) The decision reached and the actual cost or estimated potential cost, if any, of the decision;

(3) A concise description of the property or services involved;

(4) A statement of the circumstances justifying the decision; and

(5) If some adjustment action is approved, a statement in substantially the following form: "The Board finds that the action authorized herein will facilitate the national defense."

(c) The Memorandum of Decision shall omit any of the foregoing information classified "Confidential" or higher.

§ 18–17.107 Implementation of Board's decision.

(a) Copies of the Board's decision will be transmitted to the cognizant contracting officer, who will take such action as is authorized by the decision. Where the Board's decision is to reject the contractor's request for relief, the cognizant contracting officer will advise the contractor of such decision.

(b) Except as provided in paragraph (c) of this section, immediately upon execution of a contract or contract amendment which implements the decision of the Board, the contracting officer shall forward two copies of the contractual document to the Chairman, Contract Adjustment Board, marked for the attention of the Counsel to the Board, for retention with the Board's permanent files.

(c) Contracts or contract amendments for which approval of NASA Headquarters is otherwise required under the provisions of this chapter shall be forwarded for approval as provided in this chapter. After approval has been received, the provisions of paragraph (b) of this section will be complied with.

§ 18–17.108 Contractual requirements.

Every contract entered into or amended or modified pursuant to this Part 18–17 shall contain:

(a) A citation of the Act and Executive Order;

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding that the action will facilitate the national defense;

(d) The contract clause entitled "Covenant Against Contingent Fees" (see § 18–7.103);

(e) The contract clause entitled "Examination of Records" (see § 18–7.104–15);

(f) The contract clause entitled "Nondiscrimination in Employment" (see § 18–12.802);

(g) The contract clause entitled "Assignment of Claims" (see § 18–7.103–8);

(h) If otherwise applicable, the contract clauses entitled "Walsh-Healey Public Contracts Act" (41 U.S.C. 35), "Davis-Bacon Act" (40 U.S.C. 276a), "Copeland ('Anti-Kickback') Act—Nonrebate of Wages" (18 U.S.C. 874), and "Work Hours Act of 1962—Overtime Compensation" (76 Stat. 357) (see §§ 18–12.403 and 18–12.604); and

(i) Any other clauses which are appropriate to the particular procurement.

§ 18–17.109 Records and reports.

(a) The following documents shall be maintained in the permanent files of the Board:

(1) The original copy of the Memorandum of Decision; and

(2) Copies of the contractual document implementing the Board's decision.

(b) The Board shall prepare reports for submission to Congress in accordance with the Act.

§ 18–17.110 Interdepartmental coordination.

(a) *General.* Where a case involves matters of interest to more than one Department or agency, the Board may take such joint action as may be proper under the circumstances, including holding joint meetings or hearings. Liaison with the Military Departments and other Departments and agencies of the Government in connection with all such cases shall be the responsibility of the Board.

(b) *Amendments under § 18–17.103–2(a).* Requests for amendments without consideration under § 18–17.103–2(a) where "essentiality" is an issue involving another Department or agency shall not be finally determined by NASA until advice on the "essentiality" issue is requested and received from such other Department or agency. When such advice is received, the responsibility for taking the appropriate action, if any, shall be with NASA.

(c) *Funds of other departments or agencies.* Requests for adjustment within any category, where the funds of other than NASA may be required, shall not be approved by NASA until advice is requested and received from the other department or agency involved that additional funds will be made available. The request for such advice shall disclose the following data:

(1) Contractor's name;

(2) Contract number;

(3) Amount of proposed relief;

(4) Brief description of the procurement; and

(5) Account classification—fund citation.

PART 18–50—ADMINISTRATIVE POLICIES AND PROCEDURES

Subpart 18–50.1—Administrative Requirements for Advance Information and for Obtaining Approval of Contracts and Modifications

Sec.
18–50.100 Scope of subpart.
18–50.101 Contract review function.
18–50.102 General authority of contracting officers.
18–50.103 Prerequisites for contracting.
18–50.104 Advance information.
18–50.104–1 Procurements in excess of $10,000.
18–50.104–2 Information for consideration of labor surplus area concerns.
18–50.105 Approval of contracts and modifications.
18–50.106 Information to be furnished when requesting approval of contracts and modifications.

Subpart 18–50.3—Numbering and Distribution of Contracts and Grants

18–50.300 Scope of subpart.
18–50.301 Applicability.
18–50.302 Contracts and modifications.
18–50.302–1 Contracts requiring numbering.
18–50.302–2 Assignment of numbers.
18–50.302–3 Symbol identification.
18–50.302–4 Serial numbers.
18–50.302–5 Modifications.
18–50.303 Purchase orders and requests.
18–50.303–1 General.
18–50.303–2 Symbol identification.
18–50.303–3 Serial numbers.
18–50.304 Grants and supplements.
18–50.304–1 Grants.
18–50.304–2 Supplements.
18–50.305 Distribution of contracts, grants, and purchase orders.
18–50.306 Retention of documents for on-site audit.

AUTHORITY: The provisions of this Part 18–50 issued under 42 U.S.C. 2473(b)(1).

Subpart 18–50.1—Administrative Requirements for Advance Information and for Obtaining Approval of Contracts and Modifications

§ 18–50.100 Scope of subpart.

This Subpart 18–50.1 sets forth administrative requirements for furnishing advance contract information to NASA Headquarters and to specified field installations of certain proposed procurements expected to exceed $10,000; and for obtaining the approval of NASA Headquarters, prior to award, of specified categories of contracts and modifications. This subpart further prescribes information to be furnished by contracting officers in submitting contracts and modifications that require NASA Headquarters approval. The requirements of this subpart are in addition to other approval and review requirements, such as those with respect to approval of procurement plans (see § 18–3.852) and those made in connection with source evaluation procedures (see § 18–3.856).

§ 18–50.101 Contract review function.

The primary purpose of contract review and approval by NASA Headquarters of certain categories of contractual actions is to provide an independent review and analysis for the purpose of determining whether the procurements:

(a) Were competently negotiated;

(b) Are based on adequate information;

(c) Are in conformance with law, established policies and procedures, and sound business practices; and

(d) Will result in contracts that adequately protect the interest of the Government.

§ 18–50.102 General authority of contracting officers.

Contracting officers may enter into, amend, modify, and take other action with respect to contracts for property or services subject to the limitations and requirements set forth in this chapter and in letters designating them as contracting officers.

§ 18–50.103 Prerequisites for contracting.

Whether the procurement is to be effected by formal advertising or by negotiation, a contract or amendment may be entered into by a contracting officer only if:

(a) All applicable requirements of law, NASA regulations, and instructions of the installation have been met;

(b) Required approvals have been obtained from the technical and management authorities at the installation concerned; this includes, prior to the incurrence of an obligation, obtaining approval as to the availability of funds;

(c) The contract is written on a standard or an approved form of contract; and

(d) Approval of deviations from standard or authorized contract clauses has been obtained from the Director of Procurement (see § 18–1.109). In the case of advertised procurements, approval of deviations should be obtained prior to solicitation of bids; and in the case of negotiated procurements, approval of deviations should be secured prior to the conclusion of negotiations.

§ 18–50.104 Advance information.

§ 18–50.104–1 Procurements in excess of $10,000.

The procedures set forth in this § 18–50.104–1 shall be followed by procurement offices in connection with procurements expected to exceed $10,000. (The information required is used primarily for the purpose of carrying out the policies described in Subpart 18–1.10.)

(a) A copy of each unclassified pre-invitation notice, invitation for bids (IFB), request for proposals (RFP), or request for quotations (RFQ), including specifications but not drawings, shall be forwarded to the Office of Procurement (Code KD–2), the North Eastern Office, and the Western Operations Office, at the time the notice is issued or bids or proposals are solicited. If the proposed procurement is classified, only a copy of the notice or solicitation of bids or proposals shall be forwarded to NASA Headquarters.

(b) The pre-invitation notice will contain the information prescribed by § 18–2.205–4(c). Each copy of the IFB, RFP, or RFQ shall be accompanied by a statement of the estimated cost of the proposed procurement and a complete list of firms or persons solicited or invited to submit bids or proposals. This information is for internal use.

(c) Changes in or amendments to the original pre-invitation notice, IFB, RFP, or RFQ will be distributed in the same manner as the original documents.

§ 18–50.104–2 Information for consideration of labor surplus area concerns.

For information required for consideration of labor surplus area concerns see § 18–1.8.

§ 18–50.105 Approval of contracts and modifications.

(a) All contractual documents, regardless of dollar value, require a complete review by the contracting officer, notwithstanding that further review and approval may be required.

(b) Proposed contracts and modifications in the following categories shall be submitted to the Director of Procurement for approval:

(1) All incentive type contracts (see Subpart 18–3.4);

(2) Contracts for utility service when they fall within any of the categories set forth in § 18–4.5006;

(3) For architect-engineer services when:

(i) The total dollar value is $250,000, or

(ii) The work to be performed under a cost-plus-fixed-fee contract includes services of the types described in § 18–4.201(b) (2), (3), and (4), and the fee, inclusive of the architect-engineer's costs, to be paid to the architect-engineer for the performance of such services exceeds 6% of the estimated cost of the related construction project, exclusive of the amount of such fee.

(4) All contracts for personal services (see § 18–3.204);

(5) All contracts for management consultant or advisory services (see § 18–4.5205–3);

(6) All contracts involving advance payments by the Government;

(7) All facilities contracts which provide facilities having a total acquisition value exceeding $50,000, or which provide real property regardless of amount (see § 18–13.403(e));

(8) All leases for real property where the annual rental is more than $25,000 or where a certificate of necessity under 40 U.S.C. 278b is required or where the lease deviates from the forms and clauses prescribed by NASA Headquarters (see NASA Management Instruction 3–8–2A (29 F.R. 4148) concerning delegations of authority for real property transactions);

(9) Each negotiated contract or modification which by itself would obligate the Government in an amount in excess of the dollar values set forth below for the installation making the award—

(i) $200,000: Wallops Station.

(ii) $500,000: Flight Research Center.

(iii) $1,000,000: Headquarters Contracts Division, Kennedy Space Center, Space Nuclear Propulsion Office (Germantown), and Western Operations Office.

(iv) $2,500,000: Ames Research Center, Langley Research Center, Lewis Research Center, Goddard Space Flight Center, Manned Spacecraft Center, and Marshall Space Flight Center.

(10) Each proposed award in excess of the amount of contract approval authority set forth in (9) above for the installation proposing to make the award when only one responsive bid has been received after formal advertising.

(c) *Authorization to issue letter contracts.* All letter contracts require advance NASA Headquarters authorization for issuance. Such prior authorization shall be obtained in accordance with the procedures set forth in paragraph D5, Section VII of the "NASA Basic Administrative Processes" (NPC 107).

(d) *Approval Provision.* All negotiated definitive instruments which require the approval of the Director of Procurement, pursuant to paragraph (b) of this section, shall contain the clause set forth in § 18–7.104–51.

§ 18–50.106 Information to be furnished when requesting approval of contracts and modifications.

(a) General: Requests for approval of negotiated definitive contracts and modifications submitted to Headquarters for approval by the Director of Procurement, in accordance with § 18–50.105 and the procedures in NPC 107, Section VII, paragraphs D5 i through k, shall include the information set forth in this paragraph and shall be forwarded in sufficient time to allow a minimum of 15 days for review. The official contract file (which will be returned with the notice of approval, or disapproval) will be submitted with the request for approval and will include NASA Form 1098, "Check List for Contract File Content," in an original and three copies. NASA Form 1098 and the contract file will be completed and documented in accordance with the "Instructions" block on NASA Form 1098.

(b) Formal advertising: Each request for approval of a contract or modification to be entered into by formal advertising shall be accompanied by the official contract file and NASA Form 1098, completed in accordance with paragraph (a) of this section, and, to the extent not otherwise required, will include:

(1) A copy of the invitation for bids, specifications, and all addenda thereto;

(2) A list of persons or firms invited to bid;

(3) A copy of the bid received from the bidder to whom award is proposed, together with his bid bond, if any;

(4) A complete statement justifying reasons for the award, to include the basis for the determination of reasonableness of the proposed contract price; and

(5) Accounting data indicating availability of funds, and appropriate project and subproject chargeable.

(c) Negotiation: Each request for approval of a contract or modification to be entered into as a result of negotiation will contain, in the letter of transmittal, the information required by subparagraphs (1) through (4) of this paragraph and shall be accompanied by the official contract file and NASA Form 1098, completed in accordance with paragraph (a) of this section, and, to the extent not otherwise required, will include:

(1) Name and address of the proposed contractor;

(2) Location of plant or work site for performance of the contract;

(3) Contract number, including amendment number if applicable;

(4) Type of contract action (letter contract; conversion of letter contract to definitive contract, firm fixed-price, CPFF, etc.);

(5) A statement by the contracting officer justifying the use of negotiation or reference to the findings and determination authorizing negotiation, citing the appropriate subsection of 10 U.S.C. 2304(a);

(6) A copy of the request for proposals, the specifications and any addenda thereto, or a description of the property or services being procured, including delivery schedule, quantities, and estimated cost;

(7) A copy of the proposal for which award is recommended;

(8) An original and three copies of the contract, executed by the contractor and the contracting officer; in addition, for those contracts under the program cognizance of the Office of Manned Space Flight, five unexecuted copies of the contract;

(9) A list of firms invited to submit proposals and the names of firms quoting, together with copies of their respective quotations; if no competition was solicited, furnish a statement of "Justification for Noncompetitive Procurement";

(10) The history of negotiations, indicating the consideration given to appropriate factors, and the basis upon which it is concluded that the results of the negotiations are advantageous to the Government, including—

(i) The basis and reasons for selection of the firm to which award of contract is recommended—with evidence of the degree to which the capabilities of various firms were investigated prior to the final selection;

(ii) A brief summary of principal points involved in negotiations and the final results thereof, indicating price change, if any, during negotiations and explanations therefor;

(iii) A comparison of the proposed contract with previous procurements of the same or similar property or services, including dates of previous procurements, quantities, changes in specifications from last purchases, if any, and justification for change in price;

(iv) A cost breakdown representing the final negotiation and indicating:

(*a*) Direct materials—the amounts of raw materials, purchased parts, and subcontracting. Include material handling expense if the contractor's accounting system provides a separate rate therefor. State basis for determining material handling expense or rate. Comment on the complexity of items to be procured by the contractor and whether or not the NASA technical personnel consider the quantities and prices reasonable.

(*b*) Direct labor—the number of hours, hourly rate, and total cost for each class of direct labor to the extent deemed practicable. Include a statement by NASA technical personnel as to reasonableness.

(*c*) Overhead—burden applicable to the contract, including a brief statement of the basis for determining the overhead rate or amount.

(*d*) Special tooling and/or plant facilities—costs directly chargeable to the contract and necessary for the performance of the work, including a statement of how the contract will provide for protection of the Government's interest therein.

(*e*) Other direct costs—the nature and reasons therefor.

(*f*) Other indirect expenses—the amounts for general and administrative expense, selling expense, engineering or research and development burden, etc., including the basis for determining rates or amounts and methods of allocation and reason for inclusion in contract price or estimated cost.

(*g*) Profit or fixed fee—the dollar amount and percentage of profit or fixed fee, including a statement as to the basis for determining the profit or fixed fee (if the fixed fee, in addition to providing for profit, includes any allowance for costs properly allocable to work under the contract and not otherwise reflected in the breakdown, furnish a complete explanation of the nature and amounts of such costs).

(*h*) Contingencies—the nature and reason therefor.

(v) Names and locations, when available, of prospective subcontractors and estimated amounts of respective subcontracts which will exceed $25,000; state whether competition was obtained in selecting such subcontracts; if not, cite reasons for absence of competition;

(vi) A statement as to whether the contract will contain any form of price redetermination or escalation, including reasons for inclusion;

(vii) General types of Government property to be furnished, and facilities to be provided, and property already provided the proposed contractor, which will be used in performance of the work;

(viii) Statement as to whether the financial condition of the proposed contractor is considered satisfactory;

(ix) Statement of make-or-buy program agreed to with the contractor; if no make-or-buy program is established, state reasons therefor;

(x) Statement as to the technical ability and past performance of the proposed contractor;

(xi) Amount of funds available for proposed contract, including citation to appropriation, project number, and subproject breakdown;

(xii) Any other pertinent data in the form of explanations, comments, or com-

parisons concerning any unusual or new phases of the procurement or negotiation relating thereto (comments or audit report as to the financial and pricing aspects of the proposed contract should be included under this subparagraph 10 of this paragraph.

(11) Reasons for any deviation from standard or approved contract clauses; if deviation has been approved previously, include copy of request and approval document (see § 18–1.109); and

(12) If an amendment, brief summary of the basic contract and previous amendments issued.

(d) In order to comply with the provisions of § 18–3.854 (in notifying the Office of Legislative Affairs and the Office of Public Affairs, NASA Headquarters) contracting officers shall prepare and submit an original and three copies of the "Memorandum of Contract Award" with the contract file being forwarded to the Director of Procurement.

(e) The Director of Procurement shall, at the time of approving a proposed contract or amendment, forward copies of the "Memorandum of Contract Award" to the Assistant Administrator for Public Affairs and the Assistant Administrator for Legislative Affairs.

(f) Distribution of contract documents: Upon approval (or disapproval) of the proposed contract or modification, the Director of Procurement will forward the original and two executed copies of the contract and the contract file to the Installation Director via the Program Director. An information copy of the approval letter will be sent directly to the Institutional Director. An executed copy of the contract will be retained by the Director of Procurement. Contracting officers shall make prompt distribution of approved contracts, subject to the provisions of § 18–3.854. Contracting officers shall report to the Bureau of Census, Department of Commerce, contract awards subject to the Davis-Bacon Act on CB Form 16–19 (Construction Contract Award Notification) in accordance with § 18–12.404–13. Contracting officers shall report to the Department of Labor contract awards subject to the Walsh-Healey Public Contracts Act on Standard Form 99 (Notice of Award of Contract) in accordance with § 18–12.603 (d).

Subpart 18–50.3—Numbering and Distribution of Contracts and Grants

§ 18–50.300 Scope of subpart.

This Subpart 18–50.3 sets forth procedures with respect to numbering and distribution of NASA contracts, grants, and purchase orders.

§ 18–50.301 Applicability.

Contracts and grants are numbered with approved letter symbols and serial numbers for identification, audit, and filing purposes. Documents coming within the scope of this Subpart include contracts for the purchase or sale of property or services (including construction and facilities contracts), grants, purchase orders, letters of intent, letter contracts, leases, easements, or other documents evidencing in whole or in part an agreement between the parties which involves the payment of appropriated funds or collection of funds for credit to the Treasurer of the United States.

§ 18–50.302 Contracts and modifications.

§ 18–50.302–1 Contracts requiring numbering.

The following contracts shall be numbered in accordance with the uniform numbering system prescribed in §§ 18–50.302–2, 18–50.302–3 and 18–50.302–4:

(a) All contracts, letters of intent, or letter contracts for procurement or sale of supplies or services involving or likely to involve the payment or receipt of $2,500 or more ($2,000 in the case of construction work);

(b) All indefinite delivery type contracts involving more than one payment and estimated to involve payment or receipt of more than $2,500 during the fiscal year;

(c) All facilities contracts;

(d) All leases of real property and renewals thereof;

(e) All easements; and

(f) All other written agreements involving payment or receipt of funds not covered by §§ 18–50.303 and 18–50.304.

§ 18–50.302–2 Assignment of numbers.

The Comptroller General of the United States has prescribed the letter symbol "NAS" for NASA-wide use on contract documents. A complete contract number shall consist of the following and will be assigned to NASA contracts designated in § 18–50.302–1:

(a) One of the identification letter symbols set forth in § 18–50.302–3 followed by a hyphen; and

(b) A serial number (assigned in accordance with § 18–50.302–4) for the particular procurement or sale.

§ 18–50.302–3 Symbol identification.

Headquarters:	*Symbol*
All Headquarters contracts except those issued by the Office of Research Grants and Contracts	NASw–
Contracts issued by the Office of Research Grants and Contracts	NASr–
Field Installations and Space Nuclear Propulsion Offices (SNPO):	
Langley Research Center	NAS1–
Ames Research Center	NAS2–
Lewis Research Center	NAS3–
Flight Research Center	NAS4–
Goddard Space Flight Center	NAS5–
Wallops Station	NAS6–
Western Operations Office	NAS7–
George C. Marshall Space Flight Center	NAS8–
Manned Spacecraft Center	NAS9–
John F. Kennedy Space Center	NAS10–
SNPO, Germantown	SNP–
SNPO, Cleveland Extension	SNPC–
SNPO, Nevada Extension	SNPN–

§ 18–50.302–4 Serial numbers.

Contracts shall be numbered serially by the organization unit authorized to assign such numbers, commencing with the number 1 and continuing in succession without regard to fiscal year or type of contract, for example: NAS5–300; NAS5–301. If the contract is a facilities contract, the letter "F," in parentheses, shall be added at the end of the serial number for identification purposes, for example: NAS1–600(F). When the series of numbers under a symbol exceeeds five digits (99,999), a new series of numbers will be used beginning the series with number 1 and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," "D," etc., as may be required.

§ 18–50.302–5 Modifications.

Supplemental agreements, change orders, and renewals of leases shall bear the same identification as the original contract. The same series of consecutive numbers will be used for each contract even though it is modified or amended by both supplemental agreements and change orders.

§ 18–50.303 Purchase orders and requests.

§ 18–50.303–1 General.

Purchase orders and requests to other Government agencies to furnish supplies or services will be assigned a complete identifying number consisting of:

(a) One of the letter symbols set forth in § 18–50.303–2 followed by a hyphen; and

(b) A serial number, assigned in accordance with § 18–50.303–3.

§ 18–50.303–2 Symbol identification.

Headquarters:	*Symbol*
Headquarters purchase orders or requests except those issued by the Office of Research Grants and Contracts	W–
Purchase orders or requests issued by the Office of Research Grants and Contracts	R–
Field Installations and Space Nuclear Propulsion Offices:	
Langley Research Center	L–
Ames Research Center	A–
Lewis Research Center	C–
Flight Research Center	E–
Goddard Space Flight Center	S–
Wallops Station	P–
Western Operations Office	WO–
George C. Marshall Space Flight Center	H–
Manned Spacecraft Center	T–
John F. Kennedy Space Center	CC–
Pacific Launch Operations Office	PL–
SNPO, Germantown	SN–
SNPO, Cleveland Extension	SNC
SNPO, Nevada Extension	SNN–

§ 18–50.303–3 Serial numbers.

The same series of consecutive numbers will be used for both purchase orders and requests to other Government agencies. The series of numbers will commence with the number 1 and continue in succession without regard to the fiscal year. The number will follow the letter symbol, separated by a hyphen, for example: Order Number L–350; Order Number W–1,000. When the series of numbers under a symbol ex-

ceeds 5 digits (99,999), a new series will be used beginning the series with number 1 and followed by the capital letter "A." Should additional series become necessary they will be distinguished by the capital letters "B," "C," "D," etc., as may be required.

§ 18–50.304 Grants and supplements.

§ 18–50.304–1 Grants.

Grants shall be identified by letter symbols for the various types of grants, followed by a hyphen and a serial number. The serial numbers for each type of grant will begin with the number 1 and continue in succession without regard to fiscal year. The symbols for the types of grants and examples of each are set forth below:

(a) *Research Grants.* Research grants shall be identified by the letter symbol "NsG." (Example: NsG–25.)

(b) *Training Grants.* Training grants shall be identified by the letter symbol "NsG(T)." (Example: NsG(T)–300.)

(c) *Facilities Grants.* Facilities grants shall be identified by the letter symbol "NsG(F)." (Example: NsG(F)–150.)

§ 18–50.304–2 Supplements.

Supplements to a grant shall bear the same identification as the original grant and shall be numbered consecutively. (Example: Grant NsG–25, Supplement No. 1.)

§ 18–50.305 Distribution of contracts, grants, and purchase orders.

Distribution of contracts, grants, purchase orders, and modifications or supplements thereto shall be made by the initiating office in accordance with its requirements, except that in all cases not less than two copies will be furnished to paying offices, one of which will support the payment file and be retained for audit purposes in accordance with § 18–50.306. One copy of all contracts and modifications thereto requiring the approval of the Director of Procurement will be retained by the Office of Procurement.

§ 18–50.306 Retention of documents for on-site audit.

NASA contracts, grants, and purchase orders are subject to on-site audit by the General Accounting Office. The originals or a signed copy of these documents and supporting data shall be retained by the installation to be available to the General Accounting Office for audit purposes.

PART 18–51—CONTRACT MANAGEMENT PROCEDURES

Subpart 18–51.4—Processing Payments Under Cost-Reimbursement Type Contracts

Sec.

18–51.400 Scope of subpart.
18–51.401 Definitions.
18–51.402 Initial conference.
18–51.403 Vouchers—general.
18–51.404 Provisional approval of vouchers.
18–51.405 Completion voucher.
18–51.406 Withholding pursuant to contract terms.
18–51.407 Alteration of vouchers.
18–51.408 Distribution of vouchers.
18–51.409 Cost-reimbursement type subcontracts and billings.
18–51.410 Suspension and disapproval.
18–51.411 Procedure when current claim is insufficient to cover credit.

Subpart 18–51.27—Closing Completed Contracts

18–51.2700 Scope of subpart.
18–51.2701 General.
18–51.2702 Definition—completed contract.
18–51.2703 Closing checklist.
18–51.2704 Special considerations.

Subpart 18–51.4—Processing Payments Under Cost-Reimbursement Type Contracts

§ 18–51.400 Scope of subpart.

This Subpart 18–51.4 prescribes procedures pertaining to the processing of vouchers and invoices under cost-reimbursement type contracts and subcontracts.

§ 18–51.401 Definitions.

As used in this Subpart 18–51, the following terms have the meaning stated below:

(a) "Cost-reimbursement type contracts" include cost, cost-plus-a-fixed-fee, cost-plus-an-incentive-fee, cost-sharing, labor-hour, and time and material contracts.

(b) "Completion voucher or completion invoice" are terms used to identify a voucher or invoice which includes the entire or remaining contract costs and/or fee upon completion of work under a Government contract.

§ 18–51.402 Initial conference.

To establish a basis for a cooperative and efficient relationship, a conference should be arranged, when deemed necessary by the contracting officer, between representatives of the contractor and cognizant Government personnel, including the cognizant audit agency auditor and financial management personnel, to acquaint the contractor with contractual requirements and NASA procedures for administering the contract. The Government representatives should explain the procedures to be followed in presenting claims and obtaining reimbursement, the requirements as to documentary evidence, the administrative approvals required, the manner in which administrative approvals are given, and reporting requirements under the terms of the contract. Specific items which should be discussed include:

(a) Audit of the contractor's records and examination of his procedures;

(b) Withholding of contractual reserves;

(c) Allowability of costs under applicable contract cost principles and the segregation of unallowable costs thereunder:

(d) Subcontracting policies; and

(e) Procedures and contractor's rights under the "Disputes" clause.

§ 18–51.403 Vouchers—general.

(a) The frequency of submission of claims for payment is generally specified in the contract. In the absence of a contract provision to the contrary, the contractor should be requested to submit reimbursement claims once each month, or at more frequent intervals if approved by the contracting officer or his authorized representative. The contracting officer will request the contractor to consolidate claims under one contract as much as possible to minimize the number of vouchers. Only charges pertaining to one contract may be included on the same voucher.

(b) As a part of each voucher submission, the contracting officer shall request the contractor to provide an analysis of the total vouchered charges. Where data is readily available from the contractor's records, a limited analysis may be placed on the face of Public Voucher for Purchases and Services Other Than Personal (Standard Form 1034): *Provided,* The reliability of the contractor has otherwise been established. As a minimum, the analysis

shall include fee and cumulative and current costs broken down by cost elements. When a more detailed analysis is required, the Continuation Sheet (Standard Form 1035) or an attachment may be used.

(c) Where the amount of fee claimed depends on a computation based on physical progress or rate of delivery of the completed item, the contracting officer shall request the contractor to show the basis for computing the fee installment on the voucher (face or reverse of Standard Form 1035) or on an attachment. Prior to approving the voucher for payment, the contracting officer shall, as appropriate, verify the status of the contract by coordinating with cognizant Government personnel (i.e., technical, audit, and financial personnel).

(d) As an aid to administration, the contracting officer shall direct the contractor to submit separate vouchers for each of the categories of charges enumerated below:

(1) Reclaim vouchers covering items of cost initially allowed and reimbursed to the contractor, but subsequently deducted administratively or refunded by the contractor, due to the issuance of a General Accounting Office exception;

(2) Costs reserved in final settlement (these reservations are ordinarily set forth in the final release of the settlement agreement under a terminated contract; the contractor should clearly indicate on the voucher the specific exception in the final release or settlement agreement under which the amount sought to be reimbursed is claimed); and

(3) Abatement of disapproved costs for income taxes paid thereon (see Section 1481 of the Revenue Code of 1954). The voucher should be accompanied by an authenticated copy of the applicable tax reduction as calculated by the cognizant Director of Internal Revenue.

§ 18–51.404 Provisional approval of vouchers.

(a) The eligibility for reimbursement of claims submitted by a contractor for costs or payment of fee shall be determined pursuant to the terms of the contract. Authority for payment must be established before any reimbursements under the contract are approved. In no event will a reimbursement claim be processed by the contracting officer for payment which would result in cumulative payment in excess of the maximum amount payable as limited by the contract.

(b) Normally, the contractor shall be instructed to submit reimbursement vouchers under cost-type contracts directly to the contracting officer for approval prior to payment. All vouchers, with the exception of the completion voucher, shall be marked "Provisionally Approved Subject to Final Audit," signed by the contracting officer, and forwarded to the NASA fiscal or financial management office designated in the administrative recitals of the contract. Questionable costs of significant amounts determined through periodic audit or otherwise shall be suspended or disapproved prior to approval of the voucher. In those situations where (1) there is reason to question the reliability or accuracy of the contractor's claim, (2) there is an indication of cost overrun, or (3) the submission is the contractor's initial claim and the contractor is not then receiving reimbursement under a cost-reimbursement type prime contract, the recommendations of the cognizant auditor should be requested prior to approval.

§ 18–51.405 Completion voucher.

Upon receipt of a completion voucher, the contracting officer shall furnish a copy, with supporting forms, to the cognizant auditor for final audit prior to payment. The completion voucher shall be supported by the contractor's (or assignee's) release and assignment forms, and the final schedule of cumulative cost under the contract. Completion vouchers shall not be approved until the results of the final audit have been received by the contracting officer.

§ 18–51.406 Withholding pursuant to contract terms.

Unless the contractor has deducted from his claims amounts required to be withheld pursuant to the provisions of the contract, the contracting officer shall make the deduction therefor. Such deductions shall be treated as suspensions and be covered by Notice of Costs Suspended and/or Disapproved (NASA Form 456 or DD Form 396). Amounts deducted may be resubmitted by the contractor at such time as the contractor has evidenced compliance with the requirements necessary to permit payment and may, in any event, be claimed on the completion voucher.

§ 18–51.407 Alteration of vouchers.

Vouchers which have not been properly prepared by the contractor should be returned for revision. No erasures will be made on a voucher or a continuation sheet. However, a voucher and/or continuation sheet or its equivalent which requires alteration may be changed by striking out the incorrect item and writing in the correct item. An alteration made by the contractor must be initialed by the contractor. An alteration made by the contracting officer must be initialed by the contracting officer and may be made only in accordance with 36 Comp. Gen. 769 which provides that when errors in computations or extensions are detected, where the payee has clearly made claim for the full quantity of materials or services and at the proper unit price, the claim may be altered upward or downward prior to approval *provided* the adjustment does not exceed $10. Vouchers may be adjusted by contracting officers: *Provided*, NASA Form 456 or DD Form 396 is not otherwise required for costs suspended and/or disapproved and the errors are not too numerous to correct. The incorrect computation or extension may be altered by drawing a line through the incorrect amount and inserting the corrected amount on the original and all copies of the voucher. Each alteration must be initialed. The amount of the error will be deducted from or added to the total of Standard Form 1035, if submitted, and will also be deducted from or added to the total by use of the "Differences" block on Standard Form 1034. Contractors will be notified, by NASA Form 456 or DD Form 396, of mathematical errors which overstate the total amount claimed in excess of $10. If an underclaim is in excess of $10, the actual amount claimed, if otherwise proper, may be processed for payment. Contractors should be notified of any errors detected or of any adjustments made according to this policy.

§ 18–51.408 Distribution of vouchers.

(a) The following is the minimum distribution to be made of vouchers.

	SF 1034	SF 1034A	SF 1035 (if any)	SF 1035A (if any)
NASA contracting officer's file copy	------	1	------	1
Through NASA contracting officer to NASA financial management office:				
Financial management office	1	1	1	1
Project management office (when required)	------	1	------	1
Contractor (paid copy)	------	1	------	1
Cognizant audit agency (paid copy)	------	1	------	1

(b) After processing and approval of vouchers by the contracting officer, all copies of the vouchers except the contracting officer's file copy shall be forwarded to the installation fiscal or financial management office for certification, payment, and distribution.

§ 18–51.409 Cost-reimbursement type subcontracts and billings.

(a) The contracting officer shall advise the contractor who placed a cost-reimbursement type subcontract of his responsibility for the proper performance of the subcontractor and the financial settlement with the subcontractor. While the prime contractor's or upper-tier subcontractor's responsibility for a proper financial settlement includes the obligation to perform an adequate audit of the subcontractor, in appropriate circumstances audit by a Government auditor may be advisable. Adherence to this policy will ensure consistent treatment of subcontractor's cost, reduce duplicate auditing of the same records by two or more groups of auditors, and reduce the costs incurred by the prime contractor.

(b) The contracting officer shall advise the contractor to request the subcontractors to prepare their claims or commercial invoices and submit them directly to the prime contractor or upper-tier subcontractor who placed the subcontract with copies to the Government auditor and the contracting officer's authorized representative cognizant of the subcontractor. Charges should be itemized in the same detail and manner re-

quired of the prime contractor. Each claim or commercial invoice should identify the prime contract and/or upper-tier subcontract to which it relates.

(c) The Government auditor cognizant to the prime contract or upper-tier subcontract under which the cost-reimbursement type subcontract was issued is primrailly responsible for determining the need for audit of such subcontract. The following criteria should be considered when determining whether the prime contractor or the Government should perform the audit of the subcontract:

(1) Whether the subcontractor objects to an accounting review of his records by the prime contractor for valid business reasons;

(2) Whether the Government Audit Agency is currently performing audit work at the subcontractor's plant or can do so more economically or efficiently;

(3) Whether the audit by the Government Audit Agency is necessary for consistent audit treatment and orderly administration; and

(4) Whether the prime contractor has a substantial or controlling financial interest in the subcontractor.

§ 18–51.410 Suspension and disapproval.

(a) The determination as to the suspension or disapproval of an item of cost is the responsibility of the contracting officer. Suspended costs are those costs which appear questionable but upon which a final determination cannot be made based upon available information; suspended costs also include amounts which the contractor claims but which are required to be withheld pursuant to the provisions of the contract (see § 18–51.406). Disapproved costs are those costs which have been determined by the contracting officer to be unallowable under the provisions of the contract.

(b) Auditors, during the course of contract audit, may recommend to the contracting officer the suspension or disapproval of items of cost included in a contractor's voucher through the issuance of NASA Form 456 or DD Form 396. In such cases, an original and six unnumbered copies of the notice are sent to the contracting officer for his action.

(c) Upon receipt of the notice of suspension or disapproval from the auditor, the contracting officer will review pertinent data and consult with appropriate personnel to determine what further action should be taken as to the items of cost in question.

(1) Where the contracting officer is in agreement with the notice issued by the auditor, he will assign a Notice Number to the form and distribute the original and two copies to the contractor, two copies (one copy each attached to SF 1034 and SF 1034A) to the Financial Management Office, one copy to the auditor, and one copy for his own file. The original and the copies for the contractor and one copy to the Financial Management Office will be signed by the contracting officer. Other copies may bear typed or stamped signatures. Amounts deducted from the contractor's claim by the contracting officer will be shown in the "Difference" block on the face of the voucher, using one line for the amount deducted and one line for the new approved amount. In all cases, the contracting officer must be satisfied that the explanation and reasoning given for suspension or disapproval are complete and accurate. If DD Form 396 is used to disapprove an item of cost, numbered paragraph 3 of the form will be appropriately modified to show that the disapproved costs apply to a NASA contract.

(2) Where the contracting officer does not agree with the notice issued by the auditor, he shall state his reasons therefor and shall furnish to the auditor a copy of his statement, with an unsigned and unnumbered copy of the applicable NASA Form 456 or DD Form 396. Subsequent thereto, he should consult with the auditor and other Government personnel, as may be necessary, and the contractor, if appropriate, to dispose of any remaining items in question.

(d) Where a notice of suspension or disapproval is issued by the contracting officer, the contractor shall be given sufficient time to present additional information or justification in support of the items of cost suspended or disapproved. Normally, this period should not exceed 30 days. The contracting officer shall inform the contractor that issuance of NASA Form 456 or DD Form 396 is not a decision by the Contracting officer with respect to the Disputes clause of the contract. However, the contractor shall be advised that failure to reply within the time limit set by the contracting officer, or any authorized extension thereof, may result in the contracting officer issuing a final decision on the items of cost suspended or disapproved, pursuant to the Disputes clause of the contract, except for those items of cost suspended in accordance with § 18–51.406.

(e) If, after receipt of NASA Form 456 or DD Form 396, the contractor requests, in writing, an extension of time in which to present additional information or justification in support of the items of cost suspended or disapproved, the contracting officer may, if he decides that the facts justify such action, grant such additional time to the contractor, by separate letter. Where the contractor fails to submit additional data within the time specified, and fails to obtain an extension of time for submitting such data, the contracting officer may receive and act upon any data received from the contractor at any time prior to final payment under the contract, if he decides that the circumstances warrant such action.

(f) Upon receipt of the contractor's reply, the contracting officer will consult with the Government auditor, and such other personnel as may be appropriate, concerning the additional information and justification submitted.

(1) If the contracting officer decides to withdraw the notice of suspension or disapproval, action shall be taken to reinstate the items of cost involved, and the contractor's voucher, if otherwise authorized, may be processed for payment.

(2) For those items of cost which, after reexamination, the contracting officer determines are unallowable and the contractor has continued to claim, the contracting officer shall prepare and process a final decision pursuant to the Disputes clause (see § 18–1.314). Resolution of questions regarding suspended costs also may be effected by an appropriate statement from the contractor evidencing his acceptance of the suspension.

(3) When sufficient information is not available to change the status of items of cost that have been suspended, such items shall be held in a suspended status until an appropriate decision can be made. During the period of the contract, mere passage of time does not change the basic reimbursable or nonreimbursable nature of the item of cost in question. Accordingly, costs suspended will not be converted to costs disapproved when there is no reason for the conversion other than the failure of the contractor to resubmit costs. However, a final decision concerning the status of all suspended items shall be made prior to or at the time the completion voucher under the contract is processed for payment.

§ 18–51.411 Procedure when current claim is insufficient to cover credit.

(a) When the current claim is not in an amount sufficient to satisfy a credit due the Government under the contract, the contracting officer shall follow one or a combination of the procedures outlined in this paragraph to effect collection in the most expeditious and practicable manner:

(1) Deduct the amounts necessary to satisfy the credit from the current and succeeding vouchers (expected to be received within a reasonable length of time). The deductions on any voucher shall not exceed the amount thereof to avoid processing of a voucher in a credit amount. Notwithstanding that a voucher may be in a zero amount, it will be processed to the fiscal or financial management office via the usual channels to provide a record of the voucher action.

(2) Obtain from the contractor his check for the amount of the credit, payable to the Treasurer of the United States.

(3) When the credit cannot be recovered by deductions from the current and succeeding vouchers and the contractor declines to make refund thereof, the contracting officer shall accomplish or cause to be accomplished the collection by a setoff deducted from voucher(s) submitted by the contractor under any of his other contracts with the contracting officer concerned, unless otherwise precluded, such as by the no-setoff provisions of the Assignment of Claims clause. Where the contracting officer has no other contracts under which a setoff may be accomplished, he shall refer the matter to the installation fiscal or financial

management office for collection by setoff or any other method.

(b) When the collection is effected by setoff, there will be shown on the voucher from which the deduction is made a notation identifying the contract and appropriation to which the credit is applicable and identifying the related NASA Form 456 or DD Form 396.

Subpart 18–51.27—Closing Completed Contracts

§ 18–51.2700 Scope of subpart.

This Subpart 18–51.27 establishes policy and procedures governing the closing of files on completed contracts and is applicable to all NASA contracts. However, not every item listed is applicable to all contracts or all contract types. Contracting officers, in the exercise of their best judgment and discretion, will utilize those guidelines which are applicable to the particular contract, deviating from or expanding them where appropriate. The provisions of 18–8 shall be followed in closing terminated contracts.

§ 18–51.2701 General.

The procedures for closing completed contracts are a primary tool of contract management. The closing review should be painstaking and exhaustive and should ensure that the contract file is completely documented. A comprehensive closing review serves the following purposes, among others:

(a) Timely closing action ensures that records and files will not be unnecessarily encumbered and consequently permits more effective handling of current active contracts;

(b) The review identifies all uncompleted actions which might previously have been overlooked and thus facilitates expeditious final disposition action; and

(c) The review is an essential step, supplementing active contract management during performance, to ensure that all contractual obligations have been fulfilled and that the interests of the Government have been adequately protected.

§ 18–51.2702 Definition — completed contract.

A completed contract is one which is both physically and administratively complete and with respect to which all aspects of contractual performance have been either accomplished or formally waived. A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Government (including those articles and services with respect to which no specific compensation may have been stipulated). A contract is administratively complete when all payments have been made and all administrative actions accomplished.

§ 18–51.2703 Closing checklist.

(a) The closing review will focus on a verification that (1) all actions necessary to complete the contract (as defined in § 18–51.2702) have been consummated; and (2) actions have been fully documented to the extent practicable. When the review indicates that the contract may be incomplete in any respect, the surrounding circumstances shall be investigated to determine whether some necessary action has been omitted. Where prior actions have been taken but not documented, the closing memorandum shall, to the extent practicable, provide proper documentation; if this is not practicable, the closing memorandum shall be annotated to reflect the fact. When a contractual matter remains in an open status, completion action shall be initiated to the extent feasible (see § 18–51.2704(b)).

(b) The following list represents the more significant items of contract closing which should be reflected by proper documentation. (Listing these actions in connection with the closing review of the contract, contract file, and other pertinent data is not intended to indicate the order in which the actions should be taken.)

(1) Determine the status of deliveries and billings. If necessary to reconcile deliveries and payments, a letter should be obtained from the contractor showing total deliveries by items, total billings, and total payments. This data should be related to administrative records and such action to be taken may be required to reconcile differences in billings and payments and to resolve discrepancies in delivery or performance.

(2) Verify that all contract changes have been formalized. If such verification cannot be established by Government personnel, a letter may be obtained from the contractor indicating that all contractual changes have been covered by contract modification. The file should be further documented to support all equitable adjustments completed or in process.

(3) Examine the contract file to ensure that adequate documentation exists (in the form of receiving reports or other documents) to evidence receipt, inspection, and acceptance of all contract items, accomplishment of all corrections, and appropriate refund or credit when nonconforming supplies are accepted at a reduced price, in accordance with the "Inspection" clause.

(4) Verify the proper disposition of all property matters. Examination should focus on documentation evidencing:

(i) Screening of excess materials and recording of proceeds received from disposal of any surplus;

(ii) Full accounting for all Government property and, as appropriate, its transfer or removal;

(iii) Resolving of all reports of survey or other evidence of property shortages or damage, supported in each instance by administrative determination and, as appropriate, by a record of proper remittance;

(iv) Taking of proper action with respect to special tooling (review should determine whether, in those instances where the Government has paid for special tooling, including subcontractor tooling, title has been taken or disposal proceeds received);

(v) Taking of proper action to ensure that contractor use of Government-owned facilities does not extend beyond the date of authorized use (files shall be documented to show that the Government has been reimbursed in full for all rentals due for use of facilities); and

(vi) Conducting of final review of all property records by the Property Administrator, supported by a statement from the contractor that all property has been disposed of.

(5) A final review of all security requirements should be made by the Security Officer, supported by his statement that all security matters have been disposed of, to include:

(i) Declassification or downgrading, where required;

(ii) Return or disposal, where required; and

(iii) Certification by the contractor that the contractor and subcontractors have satisfied all security requirements.

(6) When a renegotiation report has been made, verify that the contract file contains a copy of the report and all supporting documents.

(7) Verify that price revision or redetermination action when called for, has been accomplished and examine the adequacy of supporting data. Files should be documented in sufficient detail when price revision has been waived.

(8) Verify that consent to subcontracts has been obtained in all instances required by the contract. The absence of consent, where contractually required, shall be the subject of appropriate comment.

(9) Ensure that all advance or progress payments have been liquidated and that action has been initiated to recover any overpayments.

(10) Ensure that in all instances where performance of contract administration functions has been delegated the actions required have been performed.

(11) Ensure that the contractor has been alerted to the contract requirement for maintenance of books and records.

(12) Confirm that appropriate and fully documented action was taken with respect to violations of standard contract clauses based on acts of Congress or Executive Orders concerning labor laws, contingent fees, domestic articles, officials not to benefit, etc., or in lieu thereof that the file contains a memorandum that cognizant administrative personnel know of no such violation.

(13) Ascertain whether any questions arose regarding exemptions from Federal or State tax laws and ensure that such questions have been properly resolved, with adequate documentation.

(14) Examine the contract and contract files to ascertain the possible existence of pending disputes, contingent liabilities, or circumstances out of which future claims of litigation might arise, potential credits, or refunds or other future recoveries. Ensure that adequate reserves have been set aside to provide for contingent liabilities. Maintain sus-

pense and follow-up on any matters which remain unresolved. Coordinate with legal personnel, where appropriate.

(15) Determine that all administrative reviews and approvals have been accomplished and documented (regarding wages and salaries, insurance, accounting, purchasing, etc.).

(16) Review all notices of cost suspension or disallowance to determine that the issues have been properly resolved, in accordance with § 18–51.410, and see that reductions of fee which are appropriate under the contract have been obtained.

(17) Determine that all reports under clauses relating to patents, inventions, and royalties have been received.

(18) Determine that all required data has been delivered. A review of the data should be made by cognizant technical personnel to ensure that the drawings, specifications, etc., reflect the most recent design changes and modifications. The review should also determine whether it is necessary or desirable that NASA have possession of the complete technical data package, including production procedures, tooling setup, quality control procedures, test reports, etc. If plans call for turning the data over to another contractor for production purposes, the technical representative should ensure that the applicable Government-furnished equipment, machine tools, and associated jigs, fixtures, and special tooling are identified and readily usable.

(19) Ensure that all investigations of fraud or suspicion of same, and reports on General Accounting Office or similar type investigations, have been completed and documented. Proper action also should be reflected with respect to delinquencies or failures in performance.

(20) Confirm that assignment and subrogation have been accomplished in favor of the Government in connection with all contractor's rights and claims, other than those against the Government, pursuant to contract terms.

(21) Establish that the final fee voucher is supported by the necessary cumulative claim and reconciliation, assignment of refunds, rebates, credits and other amounts, and final release of claims by the contractor.

(22) Ensure that the contractor performance evaluation report has been furnished, where required, and that a copy is retained in the contract file.

§ 18–51.2704 Special considerations.

(a) In the absence of full performance and compliance with all contract terms, as disclosed by the closing review, the contract file shall be examined to ensure that the documentation contained therein adequately reflects that proper action has been taken with respect to deviations, omissions, or waivers.

(b) Under appropriate circumstances, a contract may be treated as complete (when complete in all other respects) despite the existence of one or more unresolved contingencies (e.g., litigation between a prime and subcontractor). The determination that such contract will be closed will be made by the procurement officer of the installation from which the contract was issued. The contract files shall be fully documented by memoranda detailing the circumstances connected with the open item(s). No closing action shall be taken when:

(1) A matter awaiting disposition may be anticipated to have a significant impact on performance or consideration; or

(2) Complete disposition may call for substantive action on the part of the Government.

PART 18–52—PRIORITIES AND ALLOCATIONS

Sec.

18–52.000 Scope of part.
18–52.001 General.

Subpart 18–52.1—Reporting of Controlled Materials Requirements

18–52.101 Data to be reported.
18–52.102 Scope of reports.
18–52.103 Basis for developing materials requirements.
18–52.104 Requirements coordination with other Government agencies.
18–52.105 Report due dates.
18–52.106 Requirements review, assembly, and submission to DOD.
18–52.107 List of controlled materials.

Subpart 18–52.2—Allocations and Allotments

18–52.201 Allocations to installations.
18–52.202 Allotments.
18–52.203 Ledger accounts of controlled materials.
18–52.204 Report of allotments and authorized controlled materials orders.

Subpart 18–52.3—Special Expediting Assistance

18–52.301 Purpose and applicability.
18–52.302. Policy.
18–52.303 Criteria for special assistance requests.
18–52.304 Forms, preparation, and routing of requests.
18–52.305 Action by NASA Headquarters.

AUTHORITY: The provisions of this Part 18–52 issued under 42 U.S.C. 2473(b)(1).

§ 18–52.000 Scope of part.

This Part 18–52 contains procedures relating to NASA administration of the Defense Materials System (DMS). These procedures supplement the Department of Defense Priorities and Allocations Manual (PAM) and § 18–1.307. Subpart 18–52.1 contains procedures for field installation quarterly reporting of estimates of requirements for DMS controlled materials (see § 18–52.107, which lists controlled materials by their codes, forms, shapes, and subdivisions); the field installation quarterly reports described in Subpart 18–52.1 are the basis of NASA's consolidated estimates to DOD (which acts as the claimant agency for NASA) and to the Office of Emergency Planning. Subpart 18–52.2 contains procedures for (a) NASA apportionment to field installations of controlled materials allocations received from DOD and (b) allotment of controlled materials by field installations to contractors. Subpart 18–52.3 provides procedures whereby field installations may obtain special assistance in expediting raw materials, supplies, and equipment from commercial sources on NASA programs.

§ 18–52.001 General.

The Defense Materials System is maintained by the Government to assure priorities and allocation support of current production, construction, and research and development programs of selected Government agencies. The system has been declared by the Office of Emergency Planning as an essential mobilization preparedness measure. The Defense Materials System operates in NASA under a delegation of authority from the Department of Defense. The system provides priorities authority for NASA and its contractors in obtaining raw materials, supplies and equipment from industry on a preferential basis. Contractors and field installations acquire priority authority to purchase controlled materials by obtaining allotments of materials. Allotments are required for all contractors producing Class A products including construction, except for those contractors who qualify under the small order procedure as described in Section 3–4.7 of the PAM and for direct purchase of controlled materials by field installations. Allotments are not required when placing orders for Class A products with distributors, with GSA, or against a GSA schedule contract. A priority rating is used to obtain materials (other than controlled materials) and equipment in support of NASA programs.

Subpart 18–52.1—Reporting of Controlled Materials Requirements

§ 18–52.101 Data to be reported.

Field installations shall submit quarterly estimates of controlled materials requirements by the codes, forms, shapes, and subdivisions listed in § 18–52.107 for the applicable claimant programs as described in PAM 2–2. Reports will be submitted on DD Form 614, Materials Requirements—Steel and Nickel Alloys, and DD Form 614.1, Materials Requirements—Copper and Aluminum.

§ 18–52.102 Scope of reports.

(a) Requirements to be reported shall include the controlled materials needed for all NASA procurements, as follows: (1) materials to be purchased by contractors for production of Class A products, including construction, and materials for research and development, and (2) materials to be purchased by field installations for in-house operations. Materials required for production of Class B products are not to be reported. (Section 1–4 of the PAM sets forth the definition of Class A and B products.)

(b) In addition to reports for the separate claimant programs of paragraph (a) of this section, a summary or total report of such requirements of all programs shall be submitted.

(c) A separate report shall also be submitted of estimates for the materials required for items and projects which are of highest national priority. Such programs as are authorized for the special DX priority rating may be found in the DOD Master Urgency List. Requirements set forth in this separate report should also be included in the data called for in paragraphs (a) and (b) of this section.

§ 18–52.103 Basis for developing materials requirements.

The reports submitted in accordance with this instruction shall be based on the research and development, end-item, and construction programs which take into consideration all funds available or anticipated to become available. Estimates shall reflect the best judgment of the installation, and should, if possible, be derived by multiplying unit weight per item by scheduled production, with due consideration of production and purchasing lead times. When this approach is not feasible, other methods, such as factoring a relationship of materials to dollar value, engineering estimates, contractor estimates, or actual past usage of materials, may be utilized in preparing the requirements. Records shall be maintained by the field installations of the methods and data used in preparing the reports, for review upon request by NASA Headquarters.

§ 18–52.104 Requirements coordination with other Government agencies.

Field installations shall *not* report materials requirements for those items which are purchased by other Government agencies (such as the Air Force, Corps of Engineers, etc.) for NASA use. However, end-item quantitative requirements for Class A products will, if requested, be furnished to the purchasing department in order that the purchasing department may compute and include the required materials in its submission of reports to DOD.

§ 18–52.105 Report due dates.

Reports for the first quarter of each calendar year shall be forwarded to reach the Office of Procurement by the preceding September 1, for the second calendar quarter by the preceding December 1, for the third calendar quarter by the preceding March 1, and for the fourth calendar quarter by the preceding June 1.

§ 18–52.106 Requirements review, assembly, and submission to DOD.

NASA Headquarters, Office of Procurement, will:

(a) Review field installation reports for accuracy of computations and reasonableness of computed quantities in relation to authorized program procurements;

(b) Summarize data received from field installation into an overall NASA report for submission to the Department of Defense; and

(c) Justify and defend NASA estimates as may be necessary before DOD and the Office of Emergency Planning.

§ 18–52.107 List of controlled materials—Defense Materials System Regulation I.

DOD Code	Material
1200	Carbon steel (including wrought iron) total (exchange castings)
1212	Ingots, billets, blooms, slabs, and related products (excluding wire rods and stock for projectile and shell bodies)
1215	Billets, stock for projectile and shell bodies
1221	Bars, cold-finished
1222	Bars, hot-rolled (excluding stock for projectile and shell bodies and reinforcing bars)
1223	Bars, reinforcing
1225	Bars, hot-rolled, stock for projectile and shell bodies
1231	Structural shapes
1232	Piling
1240	Pipe and tubing (including threaded couplings)
1251	Plates (excluding tin, terne, and tin mill black plate)
1252	Sheet and strip (excluding galvanized)
1261	Sheet, galvanized
1262	Tin plate, terne plate, and tin mill black plate
1270	Rails and track accessories
1280	Wheels, tires, and axles
1290	Wire rods, wire, and wire products
1300	Alloy steel (excluding stainless steel) total (excluding castings)
1312	Ingots, billets, blooms, slabs, and related products (excluding wire rods)
1321	Bars, cold-finished
1322	Bars, hot-rolled
1331	Structural shapes
1340	Pipe and tubing (including threaded couplings)
1351	Plates (excluding rolled armor)
1352	Sheet and strip
1355	Plates, rolled armor
1370	Track accessories
1380	Wheels, tires, and axles
1390	Wire rods, wire, and wire products
1000	Stainless steel—non-nickel-bearing total (excluding castings)
1400	Stainless steel—nickel-bearing total (excluding castings)
1510	Brass mill copper base alloy products total
1511	Plate, sheet and strip (excluding ammunition cups and discs)
1512	Rods, bars and wire (including extruded shapes)
1513	Tube and pipe
1514	Ammunition cups and discs
1520	Brass mill unalloyed copper products total
1530	Wire mill products (copper)
1540	Foundry products (copper and copper-base alloys)
1550	Powder (copper and copper-base alloys)
1600	Aluminum total
1611	Rods and bars, rolled (excluding stock for wire, forgings, impact extrusions, rolled structural shapes and electrical cable)
1612	Rods and bars, rolled (forging stock and impact extrusion stock)
1620	Wire and cable (excluding rivet wire)
1630	Rivets and rivet wire
1651	Sand castings
1652	Permanent and semipermanent (plaster) mold castings
1653	Die castings
1654	Rotor, centrifugal, investment, and other castings not specifically classified
1661	Shapes, rolled structural
1662	Shapes, extruded (excluding forging and tube stock)
1663	Shapes, extruded, forging stock
1670	Sheet, strip and plate (including stock for forgings, pressings and impact extrusions, but excluding stock for foil)
1680	Tubing
1691	Powder
1692	Ingot
1693	Foil (0.005" and thinner)
0600	Nickel Alloys Total (excluding castings)
0601	5% to 29.9% nickel content inclusive
0602	30% to 49.9% nickel content inclusive
0603	50% to 100% nickel content inclusive

Subpart 18–52.2—Allocations and Allotments

§ 18–52.201 Allocations to installations.

(a) *Apportionment.* The Office of Procurement will apportion the allocation of controlled materials received from the Department of Defense between the various field installations. These allocations to field installations will be made on DD Form 529, Allocation Determination (in duplicate), on the basis of requirement estimates submitted by the field installations on DD Forms 614 and 614.1. DMS officers at field installations shall acknowledge receipt of allocations by signing and returning one copy of the DD Form 529 to the Office of Procurement. Appropriate entries reflecting the transaction shall be made in DMS ledger accounts. Supplemental allocations will be processed in the same manner. Field installations may request additional allocations by letter, telephone, or telegraph. Allocations issued by telephone or telegraph will be confirmed by the Office of Procurement using the DD Form 529.

(b) *Return of unused allocations.* Not later than the fifth day of each month, field installations shall review their controlled materials ledgers, together with their anticipated allotment requirements,

to determine whether they have an excess allocation of materials. Allocated quantities determined to be excess shall be returned promptly to the Office of Procurement. Returns of excess allocated controlled materials will be accepted by the Office of Procurement at any time up to the 10th day of the third month of each quarter. Return of excess allocations will be made on DD Form 530 in duplicate.

§ 18–52.202 Allotments.

Field installations shall make allotments of controlled materials to prime contractors who produce Class A products, except as noted in the PAM Section 3–4.7. Effort should be made to assure that prime consumers apply for and receive allotments. A form letter similar to that shown in Section 3–4.1 (Exhibit 3) of the PAM may be used for this purpose. Allotments should normally be issued to contractors for the full period of the contract unless the period is beyond the one-year period within which NASA has been authorized to allot materials. Allotments shall be issued on Form DMS–10, Allotment of Controlled Materials (Production), or DMS–13, Allotment of Controlled Materials (Construction). Decreases of allotments will be made on Forms DMS–11, Allotment Decrease (Production), and DMS–14, Allotment Decrease (Construction). Form DMS–12, Applicant's Return of Allotment, should be used by contractors to return unused portions of allotments. Contractor applications should be screened to determine their reasonable accuracy as to quantities of materials and delivery schedule requested.

§ 18–52.203 Ledger accounts of controlled materials.

(a) Ledger accounts will be maintained by field installations and NASA Headquarters for recording DMS transactions. The ledgers are necessary to assure that no allotments are issued without proper authority; to record purchases of controlled materials for internal consumption; and to provide data for reports of actions taken.

(b) The following account ledgers shall be maintained as a minimum requirement:

(1) By the Office of Procurement—

(i) A ledger which reflects DMS transactions for each field installation, showing the allocation given, allotments issued, returns received and remaining balance; and

(ii) A master ledger which summarizes the transactions of all field installations and headquarters for each DMS material;

(2) By field installations—ledgers for each quarter and each material by program (A1, A2, C2), as appropriate, which reflects the allocations received from Headquarters, allotments issued, returns to Headquarters, and remaining balances.

(c) Detailed information regarding the various types of ledgers which may be established and instructions for recording transactions are set forth in the PAM, Sections 5–6 and 5–7. All prime contractors who received allotments from NASA must maintain allotment accounts, in accordance with DMS Regulation I and Section 5–6 of the PAM.

§ 18–52.204 Report of allotments and authorized controlled materials orders.

(a) The Defense Materials System Officer of each field installation which issues allotments shall provide the Office of Procurement with a cumulative monthly report showing, for each controlled material and each calendar quarter, the allocations received, allotments made by claimant programs, amounts issued (with breakout for DX programs), and the unused balances. DD Form 492 will be used for this purpose. The report shall be as of the end of the calendar month and be forwarded so as to reach the Office of Procurement (Code KDF) on or before the 10th day of the next month. The report shall reflect data contained in the ledger accounts.

(b) The Office of Procurement will review and check field installation reports with NASA master ledger transactions, after which a consolidated report shall be prepared and submitted to the Department of Defense. The Office of Procurement report will be made to DOD by the 15th of the month, for the transactions of the preceding month.

Subpart 18–52.3—Special Expediting Assistance

§ 18–52.301 Purpose and applicability.

This Subpart 18–52.3 provides a procedure whereby field installations and contractors may obtain special assistance in expediting delivery of raw materials, supplies, and equipment from commercial sources for NASA programs. The procedure is applicable to NASA Headquarters and field installations.

§ 18–52.302 Policy.

In most instances, with the use of priority rating and timely procurement action, it is possible to obtain satisfactory deliveries of materials and equipment to meet program schedules. However, conflicts occasionally occur between priority-rated programs competing for the same resources. A number of factors may cause such a conflict, such as a shortage of capacity to produce a material or product, or placement by different sources of similar orders on a supplier which require delivery within the same time period. Resolution of problems of this type are accomplished by using the special assistance procedure described herein if their solution cannot be arranged at the field level. Detailed explanation, in addition to that of this Subpart, with regard to the special assistance procedure is contained in Section 7 of the PAM.

§ 18–52.303 Criteria for special assistance requests.

(a) Requests for special assistance may be submitted by field installations if there is, at a minimum, a clear demonstration:

(1) Of the relationship and importance of the applicant's requirements to NASA programs;

(2) Of the inability of the applicant to divert materials or equipment from other production to meet requirements;

(3) That failure to obtain the supplies will delay NASA program schedules; and

(4) That satisfactory arrangements cannot be accomplished by the field installation.

(b) Requests may be submitted for assistance in placement of orders, as well as to improve deliveries of orders already placed.

§ 18–52.304 Forms, preparation, and routing of requests.

(a) Form BDSAF–138 shall be used for all special assistance requests. Copies of this form may be obtained from Department of Commerce field offices, the addresses of which are listed in Section 9 of the PAM.

(b) The form shall be prepared in accordance with the instructions set forth in Section 7–2, Exhibit 2, of the PAM. Block 23C through Block 26D of the form should be left vacant for use of NASA Headquarters and DOD offices. The form may be prepared by any authorized field installation representative or by the prime contractor or subcontractors. Prime contractors may prepare forms for their subcontractors if expedient. However, all forms prepared by contractors must be endorsed by a NASA representative who preferably shall be the DMS Officer of the installation administering the contract. Technical offices of field installations having need for expediting assistance are urged to utilize the services of their local DMS Officer in preparing and processing special assistance requests.

(c) Special assistance requests on BDSAF–138 shall be transmitted in quintuplicate to the Office of Procurement (Code KDF). For emergency cases involving programs of highest national priority (DX), which warrant special handling to obtain immediate deliveries, requests will be accepted by telephone. Data transmitted by phone shall be confirmed by submission of a Form BDSAF–138 through regular mail channels.

§ 18–52.305 Action by NASA Headquarters.

(a) After receipt of the Form BDSAF–138, a thorough exploration of the case will be undertaken with a view toward determining the specific deficiency (*e.g.*, lack of capacity, prior higher priority orders, shortage of materials or parts, etc.). On the basis of the information developed, action will be taken to resolve the case by informal arrangements with the supplier and applicant. If this is not successful, the case will be endorsed, through DOD, to the Business and De-

fense Services Administration. One of the following actions will be taken by BDSA:

(1) Arrangement of improved delivery dates by informal agreement with the supplier;

(2) Issuance of a DX rating; or

(3) Issuance of a directive requiring the supplier to produce or deliver the specified item by a specific date.

(b) The Office of Procurement will maintain a follow-up of all cases received and notify field installations as to final disposition of individual cases.

PART 18–54—CONTRACT APPEAL PROCEDURE

Sec.

18–54.000 Scope of part.
18–54.101 Authority.
18–54.102 Notice of appeal.
18–54.103 Action by contracting officer.
18–54.104 Designation of Government counsel.
18–54.105 Petition.
18–54.106 Answer.
18–54.107 Reply.
18–54.108 Appeal file—inspection of file.
18–54.109 Amendments to petition and answer.
18–54.110 Trial briefs.
18–54.111 Motions to dismiss for lack of jurisdiction.
18–54.112 Failure to state a case.
18–54.113 Depositions.
18–54.114 Stipulations.
18–54.115 Prehearing conference.
18–54.116 Settlement.
18–54.117 Filing of papers.
18–54.118 Hearing.
18–54.119 Representation of the contractor.
18–54.120 Decisions.
18–54.121 Reconsideration.
18–54.122 Rescinded instructions.
18–54.123 Form for notice of appeal.

AUTHORITY: The provisions of this Part 18–54 issued under 42 U.S.C. 2473(b)(1).

§ 18–54.000 Scope of part.

This Part 18–54 establishes procedures for the review and adjudication of appeals arising from NASA contracts.

§ 18–54.101 Authority.

Under provisions of NASA Management Instruction 2–4–1, June 25, 1959, the Board of Contract Appeals is authorized to act for the Administrator in hearing, considering, and deciding appeals by contractors from findings of fact or decisions of NASA contracting officers or their representatives.

§ 18–54.102 Notice of appeal.

An appeal from findings of fact or decision of a NASA contracting officer shall be made by submitting a notice in writing, addressed to the Board of Contract Appeals (hereinafter referred to as the Board), National Aeronautics and Space Administration, Washington, D.C., 20546. Such notice shall be filed within 30 days from the date of receipt of the written decision of the contracting officer, unless otherwise provided in the contract. The original notice, together with two copies thereof, shall be mailed to or filed with the contracting officer from whose decision the appeal is taken. The notice of appeal shall indicate that an appeal is thereby intended, and shall identify the contract (by number), the contracting officer, and specify the portion of the findings of fact or decision from which the appeal is taken: *Provided, however,* That an appeal shall not be deemed invalid if the notice expresses a desire for a review of the adverse decision. The notice shall be signed by the contractor or his attorney. A suggested form of notice of appeal is set forth in § 18–54.123.

§ 18–54.103 Action by contracting officer.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing or the date of receipt if otherwise filed, and shall forward such notice immediately to the Chairman of the Board for docketing. Within 10 days from the date of receipt of the notice of appeal, the contracting officer shall transmit one copy of the notice of appeal to the General Counsel for use of Government counsel and one copy to the Board. The Board's copy shall be accompanied by a file consisting of:

(a) The findings of fact and the decision from which the appeal is taken;

(b) All documents relied upon in making findings or decision;

(c) A copy of the contract and specifications, pertinent plans, amendments, and change orders;

(d) All correspondence between the parties relating to the dispute;

(e) Transcripts of any testimony taken in connection with the dispute in addition to any affidavits or statements of any witnesses that were made prior to the notice of appeal; and

(f) Such additional information as the contracting officer may consider material.

True copies may be substituted for originals in this file.

§ 18–54.104 Designation of government counsel.

Upon receipt of the copy of notice of appeal from the contracting officer, the General Counsel shall promptly designate counsel to represent the interests of the Government. Government counsel

shall file a notice of appearance with the Board, and notice thereof shall be given promptly to the contractor by the Board.

§ 18–54.105 Petition.

A petition in support of the appeal shall be filed by the appellant with the Board within 30 days after the mailing or filing of the notice of appeal or within such longer period of time as may be allowed by the Board. A supporting brief may also be filed. The petition shall set forth:

(a) A summary of the decision of the contracting officer on the dispute from which the appeal is taken; and

(b) A simple, concise, and direct statement of each claim upon which the contractor relies and the reasons why the findings or decision are deemed erroneous.

Documentary evidence in support of claims may be filed as exhibits to the petition. Exhibits shall be plainly listed and identified in the petition. An original and two copies of the petition and exhibits shall be filed. Upon receipt thereof the Board shall forward a copy of the petition to counsel for the Government and a copy to the contracting officer.

§ 18–54.106 Answer.

(a) Within 30 days after receipt of the petition, or within such longer period of time as may be allowed by the Board, counsel for the Government shall prepare and file with the Board an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's position on each claim asserted by the contractor. A supporting brief may also be filed.

(b) Documentary evidence in support of the Government's position may be filed as exhibits to the answer. All documents filed as exhibits to the answer shall be plainly listed and identified in the answer. An original and two copies of the answer and exhibits shall be filed with the Board. Upon receipt thereof the Board shall forward a copy of the answer to the contractor or his attorney and a copy to the contracting officer.

§ 18–54.107 Reply.

The contractor may file a reply within 15 days after receipt of the answer of counsel for the Government.

§ 18–54.108 Appeal file—inspection of file.

The appeal file shall consist of the notice of appeal, documents required to be filed pursuant to § 18–54.103, the petition and exhibits thereto, the answer and exhibits attached thereto, all papers filed by the parties with the Board pursuant to instructions contained herein, and all correspondence exchanged between the Board and the parties or their attorneys. The appeal file shall be available for inspection by the appellant and Government counsel at the offices of the Board or the office of the contracting officer.

§ 18–54.109 Amendments to petition and answer.

At any time before oral hearing or before submission of a case by the parties without an oral hearing, the Board at its discretion may permit a party, within the proper scope of the appeal, to amend its petition or answer, upon conditions just to both parties. The Board, at its discretion or upon application by a party, may order a party to make a more definite statement of its petition or answer, or to reply to an answer. When issues within the proper scope of the appeal but not raised by the complaint and answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised therein. If evidence is objected to at the hearing on the ground that it is not within the issues made by the petition and answer, the Board may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Board that the admission of such evidence would prejudice him in maintaining his case or defense upon the merits. The Board may, however, grant a continuance to enable the objecting party to meet such evidence.

§ 18–54.110 Trial briefs.

The Board at its discretion may order the submission of trial briefs prior to oral hearing.

§ 18–54.111 Motions to dismiss for lack of jurisdiction.

Defenses which go to the jurisdiction of the Board shall be raised by motion. Filing of motions to dismiss for lack of jurisdiction shall not be unreasonably delayed. Motions to dismiss for lack of jurisdiction shall, upon application of either party, be heard and determined before oral hearing on the merits. The Board, however, has the right at any time to recognize its lack of authority to proceed in a particular case.

§ 18–54.112 Failure to state a case.

If, after completion of the pleadings, the Board finds that the appellant has failed to state a case on which any relief could be granted by the Board, the Board may give notice to the appellant to show cause why the appeal should not be dismissed on the ground that no useful purpose would be served by setting the case for oral hearing on the merits. The appellant, in such event, will be afforded an opportunity to be heard orally for the purpose of showing cause why the appeal should not be dismissed on that ground and, if the appellant so desires, to move to amend the complaint within the proper scope of the appeal. If the Board thereafter finds that the appellant has failed to show cause, and finds that the complaint, with such amendments as may be offered by the appellant, fails to state a case on which the Board could grant relief, the appeal shall be dismissed.

§ 18–54.113 Depositions.

(a) Depositions shall be limited to those situations where there is reason to believe that the witness will not be available for the hearing, and shall be permitted in evidence only when in fact the witness is not present at the hearing. Subject to the foregoing limitation, depositions upon oral examination or written interrogatories may be taken by either party and used as evidence at the hearing when relevant and material to the case.

(b) Depositions to be offered in evidence before the Board may be taken before and authenticated by any person authorized by the laws of the United States, or by the laws of the place where the deposition is taken, to administer oaths.

(c) The taking of a deposition shall be preceded by giving the opposite party at least 15-day notice in writing of the time and place where such deposition will be taken. The notice shall state the name and address of the witness, and the name, official title, and address of the person before whom the deposition is to be taken; and shall indicate whether the deposition will be taken on oral examination or written interrogatories. The parties may stipulate in writing the requirements of the notice, in which case no notice is required. If the deposition is to be taken on written interrogatories, two copies thereof should accompany the notice or stipulation.

(d) Within 10 days after receipt of the interrogatories, the opposing party may serve cross-interrogatories to be propounded to the witness by forwarding them to the officer designated to take the deposition and simultaneously forwarding a copy to the other party.

(e) Each deposition shall show the docket number and caption of the proceedings, the place and date of taking, the name of the witness, and the names of all persons present. The person taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and shall enclose the original deposition and exhibits in a sealed packet with postage and other transportation prepaid and forward same to the Board.

(f) A deposition taken under the provisions of this section may be offered by either party to the appeal. Depositions will not be considered as evidence until they have been offered and received as such. All objections made at the time of the taking of the deposition will be passed on at the hearing by the Board, which may exclude any part determined to be irrelevant, immaterial, or otherwise not admissible as evidence in the proceedings. The entire deposition must be offered unless otherwise stipulated by the parties or directed by the Board.

§ 18–54.114 Stipulations.

The parties may stipulate in writing to any facts that are relevant and material to the issues involved, and to those documents or facts which may be received in evidence without formal proof.

§ 18–54.115 Prehearing conference.

The Board, upon its own initiative or upon application of one of the parties, may direct the parties or their attorneys to appear before the Board or a member designated by the Chairman at a specified time and place for a conference to consider:

(a) Simplification of the issues;

(b) The possibility of obtaining stipulations as to admissions of fact and introduction of documents which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, if a hearing is to be held; and

(d) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board or the member designated by the Chairman and made part of the record.

§ 18–54.116 Settlement.

A dispute may be settled at any time by the contractor's filing written notice withdrawing his appeal or by written stipulation between the contractor and the Government counsel approved by the Board settling either the entire dispute or any part thereof. If only part of the dispute is settled, the appeal shall continue as to any issues remaining in dispute.

§ 18–54.117 Filing of papers.

The parties shall file with the Board an original and two copies of all papers, subsequent to the petition and answer. Upon receipt thereof, the Board shall forward a copy to the opposing party.

§ 18–54.118 Hearing.

(a) The contractor may submit the case on the record or request a hearing. The Board shall, at the request of either party within 15 days after the answer is filed, grant a hearing. The parties shall be given at least 15-day notice of the time and place of hearing.

(b) Hearings will be held at NASA Headquarters, Washington, D.C., unless otherwise ordered by the Board.

(c) Hearings shall be as informal as may be reasonably allowable and appropriate under all the circumstances. Both parties may offer oral and written evidence, subject to the exclusion by the Chairman of any irrelevant, immaterial, or repetitious evidence. The general procedure as to the introduction of evidence and the calling of witnesses shall be at the discretion of the Chairman.

(d) Testimony shall be under oath or affirmation, unless the facts are stipulated or the Chairman shall otherwise order. Attention of witnesses shall be invited to the provisions of 18 U.S.C. 1621 relating to false testimony under oath. If the testimony of a witness is not given under oath the Board shall invite the attention of the witness to the provisions of Title 18, United States Code, Sections 287, 1001; Section 19 of the Contract Settlement Act of 1944 (41 U.S.C. 119); and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(e) The Board shall make provision for a verbatim transcript of the hearing.

(f) After a decision has become final, the Board may, upon request and after notice to the other party, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board at its discretion as a condition of granting permission for such withdrawal.

§ 18–54.119 Representation of the contractor.

An individual appellant may appear before the Board in person; a corporation may be represented by an officer thereof, a partnership or joint venture by a member thereof; or an organization may be represented by an attorney-at-law duly licensed in any State, Commonwealth, or in the District of Columbia. In special cases, the Board may authorize contractors to be represented by persons other than those mentioned.

§ 18–54.120 Decisions.

Decisions of the Board shall be made in writing and shall reflect the opinion of a majority of the members. Copies of the decision shall be forwarded simultaneously to both parties. All final orders and decisions (except those required for good cause to be held confidential) shall be available for public inspection at the offices of the Board, NASA Headquarters, Washington, D.C.

§ 18–54.121 Reconsideration.

A request for reconsideration by the Board may be filed within 30 days after the date of the decision. Such request shall set forth specifically the ground or grounds relied upon to sustain the request.

§ 18–54.122 Rescinded instructions.

This Part 18–54 incorporates the Instruction entitled "Contract Appeal Procedure" issued by the Administrator and effective on June 25, 1959. The procedures set forth supersede the contract appeal procedures established under NASA (NACA) General Regulation No. 6, November 14, 1955; they do not apply to appeals filed prior to June 25, 1959, unless otherwise directed by the Board with the contractor's consent.

§ 18–54.123 Form for notice of appeal.

The following is a suggested form for Notice of Appeal.

Date _____

BOARD OF CONTRACT APPEALS,
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., 20546.

Appeal of _____
(Name of Contractor)

Address _____
(Street No.) (City) (Zone/State)

Contract No. (Invitation No.) _____
Specification No. _____
_____
(Name and Location of Project)

_____
(Name of NASA Office or Field Installation)

The undersigned contractor appeals to the NASA Board of Contract Appeals from the decision or findings of fact dated _____ by _____.
(Name of Contracting Officer)

The decision or findings of fact is erroneous because:

(State specific facts and circumstances and the contractual provisions involved. Use additional pages as necessary.)

_____
(Signature)

_____
(Title)

Effective date. The provision of Chapter 18 set forth a recodification of the National Aeronautics and Space Administration Procurement Regulation in effect as of September 1, 1964.

GEORGE J. VECCHIETTI,
Director of Procurement,
National Aeronautics and
Space Administration.

[F.R. Doc. 64–12400; Filed, Dec. 4, 1964; 8:45 a.m.]